James
Lis

Secrt. II-27—104,006—4-11-49.

Development (1950) Department.

MS SERIES.

G.O. NO. 4643

170

Dated 17-11-1950

[Despatch Abstract.]

Industries - State Aid to Industries

The Kollegal Silk Filatures Ltd., —
Winding up under Section 162 of the
Indian Companies Act — Ordered by
the High court — Papers recorded

Low 73683 C 1.49 3.7.49

From
H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor,
Madras.

To
The Secretary to the Government
of Madras,
Development Department,
Fort St. George, Madras.

2467. Dated 9th July 1949.

FOURTH ASSISTANT SECRETARY TO GOVERNMENT
13 JUL 1949
DEVELOPMENT DEPARTMENT

Industries - State Aid to Industries Act - The Kollegal Silk Filatures Ltd. - Winding up under section 162 of the Indian Companies Act - High Court of Madras - O.P.No.6 of 1949.

The above petition/came up before the Court on the 4th inst which has been adjourned by four weeks at the request of the Advocate for the Company. The Advocate for the Company has sent to me certain proposals with a view to settlement of this matter out of Court and a copy of these proposals are enclosed for your perusal. Please state before the 30th instant whether Government are agreeable to the suggestions put forward by the Company. A copy of the proposals will be sent by me to the learned Advocate General and his opinion on the proposals will be obtained and sent to you.

Yours faithfully,
C. Jagadeesan
Government Solicitor.

CD/SM.

2468. Copy to the Joint Director of Industries & Commerce with a copy of the proposals sent by the Company.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Ordinary Original Civil Jurisdiction.

O. P. No. 6 of 1949.

In the Matter of the Kollegal Silk Filatures Ltd.,

And

In the Matter of the Indian Companies Act, 1913.

- - - - - - - - - - - - - - -

The Province of Madras, ... PETITIONER,

-Vs-

The Kollegal Silk Filatures Ltd. ... RESPONDENT.

"WITHOUT PREJUDICE".

The Kollegal Silk Filatures Ltd. was taken over by the Government on the 12th and 30th March 1943 under the Defence of India Rules. Its validity was disputed by the Kollegal Silk Filatures Ltd. in O.S.No.2 of 1945 on the file of the District Court. On 26-11-1945, the District Judge upheld its validity though he added that the compensation awarded should have been enhanced by at least one lakh of rupees. The Kollegal Silk Filatures Ltd. has appealed against the said decision and it is pending disposal in the High Court as A.S. No. 567 of 1946.

2. The Government offered as compensation for the factory etc., which they took over, a sum of Rs.72,694-13-0. The Kollegal Silk Filatures Ltd. did not accept it. There was an arbitration to the District Judge in C.P.No. 17 of 1944. On 22-9-1945, the District Judge upheld the Government's valuation and dismissed the claim. The Kollegal Silk Filatures Ltd. has appealed against the said decision and it is pending disposal in the High Court as C.M.A.No.334 of 1947.

3...

3. As already stated in O.S.No.2 of 1945 abovesaid, the District Judge found that the compensation awarded was wholly inadequate and that the Kollegal Silk Filatures is entitled to have it increased by at least one lakh of rupees.

4. The Government has now filed the above application for winding up. The Government holds 1750 shares being roughly 10 per cent of the total share capital. The said shares were taken in order that the public confidence in the concern should be increased and the indiginous industry in Silk Filatures should be encouraged and the industry should thrive.

5. The company was producing fine silk and expected to obtain very large profits when the Government took it over. In fact, it had supplied a large quantity of Parachute silk to the Government itself before it was taken over. A neighbouring factory, The Mysore Silk Filatures Ltd., T'Narasipur, which produced similar goods has been paid by the Government and they have made a net profit of Rs.250/- a basin per year. It was able to declare a dividend of 12½ per cent during the years 1943-46. The Kollegal Silk Filatures had 150 basins. Even on the basis of 12½ per cent it would have made a net divisible profit of at least Rs.21,750/- per year during all these years, had they been allowed to work it. They have thus lost not less than Rs.1,41,375/- during these 6½ years.

6. During the 6½ years, the buildings and machinery has suffered much depreciation. Especially so during the last three years, when the factory remained closed. The factory was furnished with Italian Basins of a superior make not available at all in India. Some of them have been removed by the Government to another factory of their own which they started during the War in July 1943, notwithstanding the Order of the High Court restraining them from

removing...

removing the moveables. Some of the very valuable parts of the machinery have also been similarly removed. But they can be brought back by the Government. On the footing that the Government brings the value of the depreciation calculated at the modest rate allowed by the Incometax Department amounts to Rs.16,000/- odd. It would require about Rs.5,000/- to set up the machinery in working order.

7. The Government appears to have put up some structures and installed some machinery. At present, the value may be roughly Rs.20,000/-. The said buildings and machinery are of no use to the Government and their break up value may be negligible.

8. The Company had to spend in litigation more than Rs.20,000/- all because it had to vindicate its rights and claims as against the Government.

9. The shares are not quoted in the market at present having regard to the complications. The company as such cannot buy its own shares. But immediately the factory begins to work, the shares will acquire their per value. The Government being a shareholder will enhance the reputation of the company and add to its share value.

10. In the recent visit of Dr. S.P.Mukarji, the Minister for Industries, Government of India, he has assured that the indigenous industry should be encouraged and that the silk factories have a great future and should increase production and the Government will give all assistence to them in the way of protection and subsidy. The Policy of the Government of India is to increase silk production at as rapid a rate as possible, and if the factory be restored to the company, it will be able to show good progress in a short time.

11. Having regard to the above facts, the Kollegal Silk Filatures makes the following proposals:-

(1)...

-4-

(1) The Government should restore to Kollegal Silk Filatures the factory with all the structures, buildings and machinery as they stand, including the structures put up by the Government, and the machinery installed by them, replacing the Italian Basins and other parts of machinery removed by them from the Kollegal Silk Filatures Factory.

(2) In consideration thereof, the Kollegal Silk Filatures shall pay to the Government a sum of Rs.60,000/-.

K

(3) The appeals A.S.No.567/1946, C.M.A.No.334/1947 and O.P.No. 6 of 1949 on the file of the High Court, shall be withdrawn, and each party shall bear their costs.

vide paras 1 & 2 on p 3 above

Sd. K.S.Sankara Aiyyar.

5/

HIGH COURT,
MADRAS.

Ordinary Original Civil Jurisdiction

O. P. No. 6 of 1949.

In the Matter of the Kollegal Silk Filatures Ltd.,

And

In the Matter of the Indian Companies Act, 1913.

- - - - - - - - - - - - - -

The Province of Madras, ... PETITIONER,

-Vs-

The Kollegal Silk Filatures Ltd. ... RESPONDENT.

Copy:

PROPOSALS.

GK:

H.M. Small Esq., M.A., LL.B.,
Government Solicitor,
Madras.

Special.

9

Dev. (Coll) Dept.

issue to-day
14.7.49

Memo no 73683 D II/49-1 dated 14-7-1949

Sub: Industries - State Aid to Industries Act - The Kollegal Silk Filatures Ltd - Winding up under section 162 of the Indian companies Act.

P I cf

Ref: From the Govt. Solicitor, no. 2467 d/ 9-7-49.

The attention of the D.I & C is invited to the letter from the Govt. Solicitor cited (copy sent to him) and he is requested to offer his remarks thereon.

~~by~~ ~~urgently~~ at an early date

This may be treated as specially urgent.

✓ A'o.n P I cf

Secy 11/7/49

Secy D.I

13.7.49 (typing)

13.7.49

13.7.49

To the D.I & C.

R.D. 20-7-49

Note: The further report from the Govt. solicitor referred to at 'B' on P.I cf may be awaited till 20-7-1949

13.7.49

13.7.49

10/

Dev (D II) Dept.

Memo No. 73683 Dū/49-2 dated 21-7-1949 — Special

Sub Industries - State Aid to Industries Act -
The Kollegal Silk Filatures Ltd., Kollegal
Winding up of - under section 162 of the Indian
Companies Act -.

Ref: Govt. Memo No. 73683 Dū/49-1 d/14-7-1949. P Salam

The D.I & C is requested to
State when his reply to the Govt. Memo cited may be expected. As the
Govt. Solicitor has asked for a reply before the
30th inst., this may be treated as specially
urgent and a reply sent before 25-7-49.

Sd
21/7/49

M'on P.A. please

Vide DO

TO the D.I & C

N.R. 27-7-4

Special — Issued to day

Dev (Ws) Dept

Memo No. 43683 Dis 149-3 d/ 22-7-1949

Sub Industries - State Aid to Industries Act - The Kollegal Silk Filatures Ltd., - Winding up under Section 162 of the Indian Companies Act

Ref: From the Govt. Solicitor, No. 2467 dated 9-7-1949.

P 1 Cf

The Govt. Solicitor is requested to state whether the opinion of the ~~learned~~ Advocate General has been obtained and if so, when the further reports referred to in his letter cited may be expected

1. - 1 Cf.

22-7-49

22-7-49

TO The Govt. Solicitor, Madras.

17/49

22/7

NR 27/7 49

13

78136 Au/4 25.7.49

SPECIAL:

Industries & Commerce Department.

From
Sri P. Govinda Menon, B.E.,
Director of Industries & Commerce, Madras 5.

To
The Secretary to Government,
Development Department,
Fort St. George, Madras.

-v-v-v

14/

seasonal conditions, Government have had to close down the Government Silk Filatures, Kollegal temporarily even though the Filatures, produces quality silk. If the Kollegal Silk Filatures is allowed to start work, they may if at all produce inferior silk and hasten ruin of the silk Industry in this part of India and help to establish the unchecked sale of foreign silk.

I give below the present value of the capital block etc., of Kollegal silk Filatures:--

		Rs.
(i) Compensation paid to Kollegal Silk Filatures when Government took over the filature:		79,961 7 0
(ii) The value of additions to Capital assets made by Government since taking over:		72,146 12 1
Total	Rs.	1,52,108 3 1
(iii) The depreciation allowed from the date of acquisition to 31-3-49:		60,171 1 1
Net Value as on 31-3-1949		91,937 2 0

Against the net value of the assets viz., Rs. 91,937--2--0 the respondent is coming up with the proposal to pay Government a sum of Rs. 60,000/- which is not acceptable. It may also be pointed out that Government are not prepared to share the costs of the appeals now pending on the files of the High Court.

V. Sattanathan

for Director of Industries and Commerce.

bvs/25-3

Copy of letter No. 26947 dated 25/26th September, 1942 from the Controller of Supplies, South India Circle, United India Life Building, Madras.

****

In connection with a complaint received regarding the defects observed in silk reeled at the Kollegal Filatures Ltd., I enclose herewith copy of a letter received by Peychaud from the Bombay Silk Mills for your information.

I am sure that you will kindly have steps taken to see that these defects are remedied immediately.

I hope also that Mr. Achayya would be able to deliver the promised supply of 1,500 lbs. of silk (revised from 4,000) lbs. for September, 42.

****

Copy of letter dated 22.9.42 from M/s. Bombay Silk Mills, Bombay to R. Peychaud, Esq., Deputy Diector, Textiles.

.....

We beg to acknowledge the receipt of your letter No. 25, 124 dated the 15th instant aking us to give details of the defects found in Kollegal silk yarn and in reply to same we give below some of the defects which we have found in Kollegal raw silk:

1. Irregularity in denier (1s) The denier varies from 13/15, 20/22, 28/30 and 35/40 throughout the hank.
2. Many broken ends inside the hank.
3. Nibs and big knots with ling tails.
4, Correct end of the hank is not tied on the top by the thread when the reelers removed the hanks from the swifts.

C Ramanathan
Superintendent

Special.

Issue & despatch by Dpl. messenger to-day
26/7

Dev.(DII) Dept.

Memo No. 73683 DII/49-4 dated 26-7-1949.

Sub:-Industries - State Aid to Industries Act - The Kollegal Silk Filatures Ltd., Kollegal - Winding up under section 162 of the Indian Companies Act.

Ref:-From the Govt.Solicitor, No.2467 dated 9-7-1949.
Govt.Memo No.73683 DII/49-3 dated 22-7-1949.

P 1 Cf
P. 11 Cf

The Govt. Solicitor is requested to state wheth the opinion of the Advocate General has been obtained and if so, he is requested to forward the opinion of the Advocate General immediately to Govt.

Issued forward 26/7

DII 25.7.49
25-7-49

To the Govt.Solicitor,
Madras.

N.R. 27-7-49.

- 26/7/49

Bmb 1 Cf

Note: Please see the letter from the D.I. & C on pp 13-1. The Govt.Solicitor in his letter on p.1 c.f. has stated that a copy of the proposal would be sent by him to the Advocate General and his opinion on the proposals would be obtained and sent to Govt. No reply has been received

10/

from the Govt.Solicitor so far. He ~~has been~~ was reminded ~~remained~~ on 22-7-1949. He may again be reminded and asked to obtain and send the opinion of the Advocate General immediately. Subject to orders, the draft Memo on p.1 above is for approval.

25.7.49

26.7.49

73683/49

19

From
H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor,
Madras.

To
The Secretary to the Government
of Madras,
Development Department,
Madras.

No. 2701. Dated 26th July 1949. 78754

D2

Sir,

Industries,- State Aid to Industries Act - The Kollegal Silk Filatures Ltd., - winding up under Section 162 of the Indian Companies Act.

Rec'd 27 Jul

P 11 above

A

With reference to your Memorandum No.73683-DII/49-3 dated the 22nd instant, I have the honour to state that the opinion of the Advocate General referred to therein has not yet been obtained. A copy of the opinion will be sent to you immediately on receipt by me

Yours faithfully,

H. M. Small

Government Solicitor.

CD/SM.

Dev. (Dn) Deptt.

To A.S.

Submitted for perusal. The report referred to at 'A' above may be awaited till 5-8-49.

880 1
31.7.49 1-8-49

Sd

Urgent.

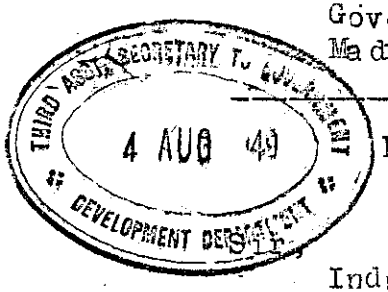
D 2 21

From

H. M. Small Esq.,
M.A., L.L.B.,
Government Solicitor,
Madras.

To

The Secretary to the Government of Madras,
Development Department,
Fort St. George, Madras.



No. 2814. Dated 3rd August 1949. 81017 4-8-49

Industries - State Aid to Industries Act - The Kollegal Silk Filatures Ltd - Winding up under section 162 of the Indian Companies Act - High Court of Madras - O. P. 6 of 1949.

P 19 Note

P 1 Note

P 23 Note

In continuation of my letter No.2701 of the 26th ultimo and with reference to your memorandum No.73683/D II/49-4 of the 26th ultimo, I enclose a copy of the opinion of the learned Advocate General received by me yesterday.

Yours faithfully,

Government Solicitor.

CD/SM.

2815. Copy for information to the Director of Industries and Commerce with copy of the opinion of the learned Advocate General.

Copy

23

From
Sri K. Rajah Iyer,
Advocate-General,
Madras.

To
The Government Solicitor,
Madras.

- -

Ms. No.187-1 dated 2-8-1949.

Sir,

O.P.No.6 of 1949 - High Court - The Province of Madras versus The Kollegal Silk Filatures Limited, - Your letter No.2700 dated 26-7-1949.

The proposals made on behalf of the Company are worth serious consideration. The Government has already acquired the factory and it has been stated in the petition filed by the Government that the Company cannot function except at a loss. Hence the proposal to pay the Government a sum of money and take back the factory deserves consideration. I am not the proper judge as to the adequacy of the amount offered.

Yours faithfully,

Sd.
Advocate-General.

1.79

Special
Issue today
6-8-49

To

The Govt. Solicitor,
Madras

Sub: Industries — State Aid to Industries Act - The Kollegal Silk Filatures Ltd. - Winding up under Section 162 of the Indian Companies Act.

Ref: Your letter No. 2814 dated 3-8-49

In your letter No. 2467 dated 9-7-49, it was reported that the petition for winding up the Kollegal Silk Filatures Ltd., which came up before the High Court on the 4th July 49, was adjourned by four weeks (i.e., till 1st August 49) at the request of the Advocate for the company. Please say whether a further adjournment has been obtained and if so, till what date

6-8-49

issued to G.S. 6.8.49 p 21 ef.

K on p 1 ef

11
18
25
1 & 8

P.C. to go

6-8-49

27

C.E. 304.

OFFICE OF THE A.S. III

Date 6-8-1949

Hours 1 Minutes 37

TELEPHONIC MESSAGE.

From The Govt Solicitor Madras High Court | To A.S. to Govt D.O. D.H.

Sub Industries - State Aid to industries - Kolligal Silk Sibastans LTD. Winding up under Section 162 of the Indian Companys act

Ref. Your T.M. d. 6-8-49

The petition will come up before the court again on the 9th

b 25 alterte

[Please write on both sides.

instant the Company's proposal for Resettlement also the opinion of Advocate General thereon have already been sent you for consideration In the circumstances further adjournment will be obtained by me on the 9th instant.

Yours
6.8.47.

Special
Issue & despatch
by Spl. messenger.
10.8.49

pp 13-14 Cf

p 23 Cf

Development Section

Memo. No. 73683 dt. II/48-5 dated 10-8-1949. 29

Industries – State Aid to Industries Act – Messrs Kollegal Silk Filatures Ltd. – Winding up under Section 162 of the Indian Companies Act – Proposals of the company for a compromise

Def from the D. I&C. No. S.A. 1352/49 dt 25-7-49.

A copy of the opinion of the Advocate General on the subject cited is communicated to the D. I&C. and he is requested to offer his remarks thereon at a very early date.

10-8-49

Sd/-
10/8/49

To The D. I&C.

Copy of the opinion of the Advocate General cited in the margin is sent herewith. (Encl. a copy of p. 23 Cf.)

10.8.49
R. D. 20-8-49

MINISTER FOR INDUSTRIES
10 AUG 1949
GOVERNMENT OF MADRAS

Dear Secy

A/ Pl. examine & put up.

82899

10.8.49 ed 10/8.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Ordinary Original Civil Jurisdiction.

O.P.No. 6 of 1949.

In the matter of the Kollegal Silk Filatures Ltd.,

and

In the matter of the Indian Companies Act, 1913.

The Province of Madras. ... Petitioner.

Vs.

The Kollegal Silk Filatures Limited. Respondent.

Counter affidavit filed on behalf of the respondent herein.

I, M.S.Ganesa Aiyar, son of late Sundarappier, Hindu, Brahmin, aged about 65 years, Managing Director of the Respondent Company herein, residing at "Sundara Bhavan", Basavangudi, Bangalore City, do hereby solemnly and sincerely affirm and state as follows:---

1. I am the Managing Director of the above company and am aware of all the facts.

2. I admit the correctness of paragraphs 1 to 3.

3. The allegations in paragraph 4 are inaccurate and misleading. It is true that the requisition and acquisition were made on the 16th March 1943 and 30th March 1943. But they have been validly made is the subject matter of two appeals A.S.No. 567 of 1946 and C.M.A. No. 334 of 1947 on the file of the High Court, Madras. When there was no need to do so, and when the company was supplying all the needs of the Government, the Government took the needless step of making a requisition

and then of acquisition.

4. The respondent states that the company had been formed with the object of manufacturing raw and finished silk on a large scale in a place ideally suited to it and at a time when 50 % of the silk produced in India came from the neighbouring Mysore State. It was formed to promote Cottage Industry for a number of employees and when it functioned under the company more than 300 families were enabled to make their living by work furnished by this company. When the Government took over the factory etc., the Directors protested against the action of the Government and promissed to give all the assistance in the war-work. But, notwithstanding their opposition and contrary to the provisions of law, the Government took over.

5. Under the Arbitration clause in the Defence of India Rules, the Government paid a sum of Rs.79,961--7--0 as compensation for acquisition. The compensation paid was wholly inadequate, and in fact, the learned District Judge held in O.S.No.2 of 1945 that the company was losing a sum of Rs.3000/- per month and that the damages awarded should at least have been a lakh(Rs.100,000/-) more than the sum actually given. But in that suit he thought he had no jurisdiction to award it. Appeal No.567 of 1946 which is pending in the High Court is the appeal against that decision.

6. In that appeal the company applied for and finally obtained an order for injunction in C.M.P.No.6037 of 1946 on 13--3--1947 restraining Government from removing the machinery which were taken from the company.

7. The then Director of the Government was unwilling to

let the company work the business. All attempts on the part of the Directors to regain it and work it were unreasonably resisted and thwarted for no obvious reasons.

8. It is wrong to say that the Government has spent a large sum of money to bring the basins in the factory into working condition and effected extensive improvement to the factory. The factory was working in good condition and had actually made large profits when the Government took over, and had the management been continued by the Directors would have yielded very large profits from 1943 upto date.

9. The allegation that the factory had to be closed on 1--11--1946 is wholly incorrect. The then Director wanted to dismantle this Filatures and take them over to another factory in November 1946. The respondent then applied for interim injunction in C.M.P.No.6037 of 1946 above referred to and obtained the order.

10. The allegation in paragraph 8 is baseless and misleading. The Government may not find it possible to work it owing to reasons of its own. It was actually working very well when the Government took it over as the following facts will show. The reason given by the Government is eminently one for the company's claim to a return of the factory and basins.

11. When the Government took over, there were ~~250~~ 100 basins working and ~~250~~ 50 more (that were not in use also worked). ~~had been instituted.~~ The Government put up 500 basins more, had inefficient, top-heavy and indifferent management with the result that except what was needed by the Government for War-work, nothing else

33/34

was produced and was required to be produced and, on the other side of the river where the Mysore State works a silk factory, there are 1500 basins and they are working perfectly well.

12. The alleged closing down was not due to any inherent difficulty in working the factory. The company was making repeated demands for its restoration and did not want their compensation; but the Government repeatedly refused to restore it to them.

13. It is incorrect to say that the respondent company will not be able to get the cocoons adequate to keep the factory working. In fact, even if it is restored today, the company is willing to take it up and work it profitably.

14. It is not true to say that the respondent will be unable to get the raw material for the efficient working of the factory or that there is no reasonable prospect of adequate supply of cocoons. In fact, the Mysore Government has been expanding its factory on the other side of the river and there is equal scope for expansion on this side of the river also.

15. It is wrong to say that the primary object of the company has become impossible or impracticable or that there is no reasonable hope of the company functioning at all without heavy loss.

16. So far as the balance sheet is concerned, in 1940, viz., within two years of the formation of the company, its profit was Rs. 6884--7--11. In the next year, the manufacturing and trading loss was only Rs. 2096--3--6. There

was the Managing Agents allowance of Rs.7000/- and depreciation etc., which accounted for the loss of 20023-4-2 shown in the balance sheet. From the 1st July 1942, the Managing Agency ceased and even in the balance sheet of 30--6--1942, the company showed a profit of Rs.9685--6--6, despite the fact that a payment of Rs.5332--4--2 had been made to Managing Agents and a sum of Rs. 4279--4--1 was set off towards depreciation.

17. The company was working profitably and was in the upward trend will be obvious from the actual working of the company as disclosed by the balance sheet of the next year. The Cocoons consumed were of the value of Rs.2,47,513--14--6 Much of the silk had been taken over by the Government. Silk of the extent of 15907½ lbs had been supplied to Government and not paid for by them then and there as there was a dispute about the price. In fact, though the balance sheet showed a loss of Rs.52,135--14--1 for the year, it did not reflect any actual loss in the event, because, for the silk supplied upto 30th June 1943, the company was paid in the next year a sum of Rs.86,452--0--8, resulting in a profit of Rs.81,881--12--1 in the next year.

18. In the subsequent years, the Government worked the factory. The company was involved in two litigations against the Government and in one against the late Mr. De Silva which accounted for much of the expenditure. It was also writing off its preliminary and other expenses which account for the loss actually shown. But even with all that, the last balance sheet dated 30--6--1948 showed a profit of Rs.1713--8--2.

19. Even taking the entire period totally, it shows only a profit notwithstanding the fact that from March 1943 the company had no control of the factory and the machinery.

20. The allegation in paragraph 8 is correct.

21. It is wrong to say that the substratum of the company is gone or that the company's business cannot be worked except at a loss for want of adequate supplies of raw -- material or that it is just and equitable that the company should be wound up. The company has no debts to pay and its resources for carrying on the business are ample.

22. The respondent states that if the factory with its machinery is restored to the respondent in the state in which the Government took it over, the respondent will be able to work it up properly and profitably. The action of the Government in sticking on to the factory is unreasonable and unsustainable.

23. The respondent submits that in the events that have happened there should be absolutely no objection to the Government restoring the factory and the premises to the company and enabling the company to carry on its business.

24. In any case, till the appeals A.S.No.367 of 1946 and C.M.A.No.334 of 1947, in the High Court are decided, it is not just and equitable to order the winding up of the company. It will then be possible to know whether the company is entitled to restitution of its properties and assets and if it is not so entitled what the damages payable to the company is. In either case, it is not equitable that the prospect of restoration should be stifled at this stage.

25. The respondent is willing to abide by such terms as may be imposed by this court as to the establishment charges etc.

26. The respondent submits that in any case, the above proceedings should be stayed pending the disposal of A.S. No.567 of 1946 and C.M.A.No.334 of 1947 on the file of this Hon'ble Court.

27. The company has had an influential and responsible directorate and there is every reason to hope that the object of trading at a profit can be attained.

28. If, notwithstanding the above, this Hon'ble Court thinks it necessary that the company should be wound up, the respondent submits that it be wound up voluntarily as so as to minimise the loss and expense to the Shareholders and enable the Shareholders to get the maximum advantage through the help of liquidators of their choice who have experience of the working of the company.

Solemnly affirmed before me)
at Bangalore, this day of)
February 1949, and signed his)
name in my presence. ...) Before me.

Signature and attestation
and designation of the
officer attesting.

38/
38.

HIGH COURT--MADRAS.

(Original Side).

C.P.NO. 6 OF 1949.

In the matter of the Kellegal Silk Filatures Limited,
and
In the matter of the Indian Companies Act, 1913.

The Province of Madras--Petitioner.

Vs.

The Kellegal Silk Filatures Limited. -----Respondent.

Counter affidavit filed on behalf of the respondent herein.

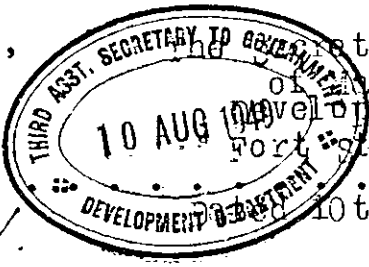
Mr. K. S. SANKARA AIYAR,

COUNSEL FOR RESPONDENT.

From VERY URGENT. To

H.M.Small Esq., M.A., LL.B.,
Government Solicitor,
Madras.

The Secretary to the Government of Madras,
Development Department,
Fort St. George, Madras.



No. 2921. Dated 10th August 1949.

Sir,

82898
10.8.49

Industries - State Aid to Industries Act- The Kollegal Silk Filatures Ltd-winding up under section 162 of the Indian Companies Act- High Court of Madras - O. P. No.6 of 1949.

Ref above-

In continuation of my letter of the 3rd instant and with reference to my telephone message of the 6th instant the above petition came up before the Court yesterday and, at my request, has been adjourned by one more month to enable me to receive Government's instructions on the proposals made by the petitioner. The learned Judge has indicated that no further adjournment will be granted in any circumstances and that the parties must be ready to go on with the hearing of the petition on the next adjourned date. In the circumstances please let me know as urgently as possible whether the proposals made by the petitioner are acceptable to Government and, if so, please indicate the terms on which Government wish to settle this matter out of Court. If the proposals are not acceptable to Government then the Sericultural Expert, Kollegal, should be present in Court on

the

2340

the next adjourned date when the petition will be taken up for hearing.

CD/CJJ.

Yours faithfully,

Government solicitor.

2922. Copies for information to the Director of Industries & Commerce, Chepauk, Madras, 2923 and The Sericultural Expert, Kollegal. A

Issued
Issue
8
11/8

Dev (Dū) Deptt.

Memo No. 73683 Dū | 49-6 dated 11-8-1949

Sub: Industries - State Aid to Industries Act - The Kollegal Silk Filatures Ltd., - Winding up under Section 162 of the Indian Companies Act -

Ref: Govt. Memo No. 73683 Dū | 49-5 d/ 10-8-49.

The attention of the D.I & C is invited to the letter No. 2921 d/ 10-8-1949 from the Govt Solicitor (copy sent to him) and he is requested to submit his reply to the Govt. Memo cited so as to reach Govt. on or before 20-8-1949.

2. A copy of the counter affidavit filed by the Managing Director, The Kollegal Silk Filatures Ltd., Kollegal on behalf of

P. 29 Cf

PP 29-40 Cf-
Vide A'cy. P 40 Cf

P 29 Cf

PP 31-37 Cf

the company is forwarded to the D.I & C for information.

11.8.49 11.8.49

11/8/49

TO the DI & C (with a copy of pp 31-37 ct;

12.8.49 R.D. 20.8.49

43

Industries and Commerce Department. 83946

From
The Director of Industries
and Commerce,
Chepauk, Madras.

To
The Secretary to Government,
Development Department,
Madras.

13.8.49

D 2

No. S.A. 1352/47 dated 11-8-49.

Sir,

Sub: State Aid to Industries Act - Kollegal Silk Filatures Limited, Kollegal - winding up of.

Ref: 1)Letter No. 2814 dated 3-8-49 from the Government Solicitor, Madras addressed to Government.
2)Government Memo No. 73683-D.II/49-5 dated 10-8-49.

- - - -

P 2 above

P 2 above
13 AUG 49

P 2 above

With reference to the opinion of the Advocate General forwarded to Government by the Government Solicitor in his letter No. 2814 dated 3-8-49, I have to point out to Government that the compensation offered by Messrs. Kollegal Silk Filatures Ltd., for the return of the factory to them is far from adequate as explained by me in my letter No. S.A.1352/47 dated 25-7-49. The Government Silk Filatures, Kollegal has had to be closed down since March due to the impossibility of purchasing cocoons at reasonable prices. In the circumstances there is no possibility of Messrs. Kollegal Silk Filatures Ltd., being able to work their factory profitably even if they regain possession of it now. As Government funds are invested in the company, this means that Government will have to share the losses that are sure to be incurred by attempts to work the factory at present. The return of the factory to the company will also be suicidal on the part of the Government, as it will make it more difficult to work the Govt. Silk Filatures again when conditions have improved in face of the

P 13-14 above

p.t.o.

44

unhealthy competition from the company.

kap. 12-8.

for Director of Industries and
Commerce, Madras.

Issued
8/26/8

Development Dept. 45

Memo. No. 73683 dt. 5/49-8 dated 25-8-1949

Industries — State Aid to Industries Act — The Kollegal Silk Filatures Ltd. — Winding up under Section 162 of the Indian Companies Act — Proposals of the company for a compromise.

Ref from the Govt. Solicitor, Madras No. 24678/49 dt. 19-8-49
No. 28148/8 dt. 19-8-49

The Govt. Solicitor, Madras is informed that the terms offered by the company are not acceptable to the Govt.

Sd/- 19-8-49

By order, Sd/- B. Ley

To The Govt. Solicitor, Madras.

Copy to the D.I.&C. (w.r.t. this letter No. S.A. Dept. 1352/47 dt. 11-8-49)

Issued 26-8-49 pp 143-44 C/f

p.1 c/f
p 21 c/f
M. on p. 1 c/f
& p 6 n/f
pp 3-6 c/f

47

From
H. M. Small Esq.,
M.A., LL.B.,
Government Solicitor,
Madras.

To
The Director of Industries & Commerce,
Madras.

93098 Ind/49

No. 3412. Dated 12th September 1949.

Sir,

Industries - State Aid to Industries Act - Kollegal Silk Filatures Ltd - Winding up under section 152 of the Indian Companies Act - High Court of Madras - O. P. No.6 of 1949.

The above petition was in the list today and was reached in the afternoon. The Sericultural expert, Kollegal was also present at my office in connection with the above petition. The learned Advocate General who was to have appeared on behalf of Government at the hearing of the petition was engaged in another important Government case the hearing of which I understand will not conclude even tomorrow. In the circumstances, at the request of the learned Advocate General I moved the Court for a further adjournment of the hearing of the petition and the petition has accordingly been adjourned to the 10th proximo for hearing on which date the Sericultural expert, Kollegal, may be requested to call at my office at 10.45 a.m.

Yours faithfully,

Government Solicitor.

OD/GM.

3413. Copies for information to:
1. The Secretary to the Government of Madras, Development Department, Fort St. George, Madras.
3414. 2. The Sericultural Expert, Kollegal.
3415. 3. The Registrar of Joint Stock Companies, Madras.

18/

73682/49.

Dev. Depl-

To A.S.

The letter from the Govt. Solicitor on p. 47 above may be perused. A further report may be awaited till 25-10-1949.

15.9.49 15-9-49

49

Dev (D II) Dept

Issue
26.10.49

Memo No 73683 D II/49-9 dated 26-10-1949

Industries -- State Aid to Industries Act - Kollegal Silk Filatures Ltd - Winding up under section 162 of the Indian Companies Act - High Court of Madras - O.P. No. 6 of 1949

Ref: From the Govt Solicitor No. 3412 dated 12-9-'49

The Government Solicitor is requested to state the stage at which the matter stands.

25.10.49 25.10.49

25.10.49

To
The Govt Solicitor
Madras

N.R. 25-11-49

107574 A&T/49
3.11.49

From

H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor,
Madras.

To

The Assistant Secretary to
Government,
Development Department,
Fort St. George, Madras.

THIRD ASST. SECRETARY TO GOVERNMENT
8 NOV 1949
DEVELOPMENT DEPARTMENT

No. 4067. Dated 1st November 1949.

Industries - State Aid to Industries Act - Kollegal Silk Filatures Limited - Winding up under section 152 of the Indian Companies Act - High Court of Madras - O. P. No.6 of 1949.

With reference to your memorandum No.73683-D.II/49-9 dated the 26th ultimo, the above petition which came up before the Court on the 10th ultimo has been adjourned, at the request of the Advocate for the respondent, till after the disposal of the appeal filed by the respondent Company in the High Court against the judgment of the District Judge, Coimbatore.

Yours faithfully,

C. Jayaraman

Government Solicitor.

CD/SM.

53

From
Sri K.Kuttikrishna Menon,
Government Pleader,
M a d r a s.

To
The Secretary to Government,
Development Department,
Fort St. George, Madras.

No. 1167 Dated, 14th November 1949.

11585 Dev/49 16.11.49

Sir,

Sub: Suits - Kollegal silk Filatures Limited, Kollegal - Acquisition of properties by Government of Madras - Decree in O.S.2/45 filed in the District Court, Coimbatore - Appeal No. 567/46 and C.M.A.No. 334/47 - Result.

Ref: G.O.Mis.No. 476, Development, dated 7-2-47 and G.O.Mis.No.4958, Development, dated 22-10-1947.

The above appeal and the C.M.A. came up for hearing before their Lordships Subba Rao and Somasundaram JJ. on 1-11-49, 3-11-49, and 4-11-49 and judgment was pronounced this day dismissing the appeal with costs and remanding the C.M.A. In the course of their judgment their Lordships held that the requisition and acquisition proceedings were perfectly valid. They also held that what was requisitioned and acquired was an undertaking and that the valuation ought to have been made on that basis. As the lower court has not valued the undertaking as such but only as immovable and movable properties, the C.M.A. has been remanded for fresh disposal. Costs of the C.M.A. have been directed to be provided for in the revised orders to be passed.

K Kutti Krishna Menon
Government Pleader. 14.11.49

Copy to the Director of Industries and Commerce, Madras.

Draft I

29-30/28/11

Issue - 2 drafts
Two drafts sent

Dev. Dept.-

Memo No. 73683 Dev/49-12 dated 25-11-49

Sub: Industries - State Aid to Industries Act - Kollegal Silk Filatures Ltd., - Winding up under Section 162 of the Indian companies Act - High Court of Madras - O.P. No. 6 of 1949

p 51 C/f Ref: From the Govt - Solicitor No. 4067 d/1-11-49.

p 53 C/f A copy of the letter No. 1167 d/14-11-1949 from the Govt. Pleader, Madras is communicated to the Govt. Solicitor. He is requested to state when the petition filed by him for winding up the Kollegal Silk Filatures Ltd., will be taken up by the High Court

Issd 29.11.49 & 21.11.49

Shown 29/11

the Govt. Solicitor (with encl)

R.D. 20.12.49 p 53 C/f

Draft II

5 7 3

y. issue
DSR
25.11.49

Dev. Deptt.

Memo No: 73683 D II/49-13 Dated 25-11-1949

Sub: Suits – Kollegal Silk Filatures Ltd., Kollegal – Acquisition of properties by Govt. of Madras – Decree in O.S. 2/45 filed in the District Court, Coimbatore – Appeal No. 567/46 and C.M.A. No. 334/47 – Result

p 53 ct Ref: From the Govt. Pleader, Madras No. 11671/14-11-49

The Govt. Pleader is requested to send a copy of the High court's judgment in appeal No. 567/46 and C.M.A No. 334/47 referred to in his letter cited

cl and

DSR
25.11.49

25.11.49

2.57 M

To

The Govt. Pleader,
Madras.

R.D. 20.12.49

59

From

H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor,
Madras.

To

The Assistant Secretary to Government of Madras,
Development Department,
Madras.

G 1V8116 5.12.49

No. 4655. Dated 3rd December 1949.

Sir,

Industries - State Aid to Industries Act - Kollegal Silk Filatures Limited - Winding up under section 152 of the Indian Companies Act - High Court of Madras - O. P. No.6 of 1949.

p. 55 above.

I am in receipt on the 30th ultimo of your memorandum No. 73683 DII/49-12 dated the 25th ultimo.

All petitions under the Indian Companies Act are posted before the Court for hearing on Mondays only but I find from the Court cause list that the petition is not posted before the Court on the 5th instant. As the petition had been adjourned till after the disposal of the appeal filed by the respondent Company, and the appeal has now been disposed of, the petition filed by Government for the winding up of the Company will be posted before the Court hereafter. I am not in a position to give you the exact date on which the petition will be posted before the Court but in the course of next week, after ascertaining the convenience of the learned Advocate-General, I shall endeavour to have a suitable date fixed for the hearing of the petition and write to you.

Yours faithfully,

H. M. Small

Government Solicitor.

CD/SM.

60/

736 x. 3 | 49

Dev Dept.

To A S.

The letter from the Govt. Solicitor on p. 5-9 above may be perused The Govt. Solicitor may be reminded on 5-1-1950, if necessary.

5.12.49

61/49

61

16 DEC 1949 DEVELOPMENT DEPARTMENT

From

H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor,
Madras.

To

The Assistant Secretary to the
Government of Madras,
Development Department,
Madras.

121755 Dy/9
16.12.49

No. 4824. Dated 13th December 1949.

Sir,

Industries - State Aid to Industries Act - Kollegal Silk Filatures Limited - Winding up under section 152 of the Indian Companies Act -- High Court of Madras - O. P. No.6 of 1949.

p.59 above

In continuation of my letter No. 4655 dated the 3rd instant, the above petition which came up before the Court yesterday has been adjourned to the 9th proximo for hearing. I expect the petition to be taken up for hearing on that date and the presence of the Sericultural expert at ~~Madras~~ Court on that date will be necessary.

Yours faithfully,

H. M. Small

Government Solicitor.

CD/SM.

4825. Copies for information to The Director of Industries & Commerce, Madras and to the Sericultural Expert,
4826. Kollegal, South India.

62 /

73683/49

Dev. Dept.-

TO A.S.

The letter from the Govt. Solicitor on p. 61 above may be perused The Govt.-Solicitor may be reminded again on 22-1-1950, if necessary

16.12.49

(Reminder under issue)

Dev (D II) Dept

Issued
20.12.49

Memo No. 73683 D II/49-14 dated 20-12-49

Sub: Suits — Kollegal Silk Filatures Ltd., Kollegal — Acquisition of properties by Govt of Madras — Decree in O.S. 2/45 filed in the District Court, Coimbatore — Appeal No. 567/46 and C.M.A No. 334/47 — Result

Ref Govt Memo No. 73683 D II/49-13 dated 25.11.1949

The Govt Pleader is requested to state when a reply to the Govt Memo cited may be expected

20/12/49

To
The Govt Pleader
Madras

NR 18-1-50

65

125279 அ1/49
29.12.49

From
Sri K.Kuttikrishna Menon,
Government Pleader,
M a d r a s.

To
The Secretary to Government,
Development Department,
Fort St. George, Madras.

No. 1353 Dated, 28th December 1949.

Sir,

Sub: Suits - Kollegal Silk Filatures Ltd., Kollegal - Acquisition of - Properties by Government of Madras - Decree in O.S. 2/45-filed in the District Court, Coimbatore - Appeal No. 567/46 & C.M.A. 334/47 - Result.

Ref: Memorandum No. 73683 D.II/49-14 dated 20-12-49.

Certified copies of decree and judgment have been applied for and they will be forwarded on receipt from the High Court.

K Kuttikrishna Menon
28.12.49
Government Pleader.

Dev. Dept.

N.R. 22.1.1950.

29.12.49 29.12.49 30/XII (Rem. under issue)

Special.

Dev. Dept.

T.M.

To

The Govt. Solicitor.
The D.I. & C.

T.M. Issued 24.1.50.

Sub:-Industries - State Aid to Industries - The Kollegal Silk Filatures Ltd., - Winding up under Section 162 of the Indian Companies Act.

Ref;-Your letter No.4824 dated 13-12-1949.
No.1352/47 dated 11-8-1949.

It is understood that the Kollegal Silk Filatures Ltd. have intimated their intention of liquidating the concern themselves and that the case stands posted for hearing on the 30th instant. Please say whether you have received any such intimation and if so, submit the proposal to Govt. with your remarks immediately.

P.C. to go.
R.D.28-1-50.

From

H. M. Small Esq., M.A.,
LL. B.,
Government Solicitor,
Madras.

To

The Director of Industries & Commerce,

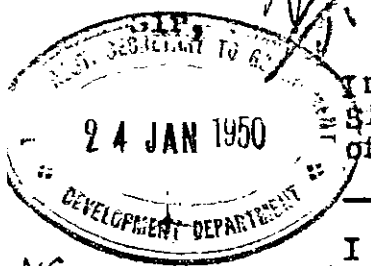
M a d r a s.

D II 69

6637 54/50 1.50

No. 348.

Dated 21st January 1950.



Sir,

Industries - State Aid to Industries Act - Kollegal Silk Filatures Limited- winding up under section 152 of the Indian Companies Act- High Court of Madras- O.P. No.6 of 1949.

I refer to my letter of the 7th instant to the Sericultural Expert, Kollegal, a copy of which was also sent to yourself.

The above petition was not in the list of causes on the 9th instant but came up before the Court only on the 17th instant. The Advocate for the company represented to the learned Judge that the company had passed a resolution for its voluntary winding up and that the company had also filed an application for the permission of the Court to the company to go into voluntary liquidation. The petition has now been adjourned, at my request, to the 31st instant to enable me to obtain further instructions from Government.

The learned Advocate General also appears to be of the opinion that since the Government director of the company is of the view that all the shareholders will be paid one hundred per cent of the share money there can be no objection to the company being permitted to go into voluntary liquidation. I am requesting the learned Advocate General

P.T.O.

70/

A) to confirm his opinion and I shall write to you again as soon as I hear from him.

Yours faithfully,

H.M. O'Neill

Government Solicitor.

CDVA.

Copies for information to:-

349. 1) The Secretary to Overseas Development Department, Whitehall.

350. 2) The Principal Legal Adviser, Kollywood.

Two drafts

~~Issue two drafts~~
bsr
24.1.50

31-32
25/1

Draft I only.

70(a

Dev. Dept

Memo No. 73683 A/II/49-15 dated 24-1-1950

Sub: Suit - Kollegal Silk Filatures Ltd., Kollegal Acquisition of properties by Govt. of Madras Decree in O.S. No. 2/45 filed in the Dt. Court, Coimbatore - Appeal No. 567/46 and C.M.A. 334/4. Judgment

Ref: From the Govt. Pleader, Madras No. 1353 d/ 28-12-49

p. 65 cf-

The Govt. Pleader is requested to state whether certified copies of decree and judgment have been received from the High court and if so, when they may be expected

bsr
23.1.50
23.1.50

To the Govt. Pleader,
Madras.

NR 20/2/50

P.T.O

70(b)

Draft- II

Memo No. 73683 /49-16 dated 24-1-1950.

Not issued

Issued per D.O. 24.1.50

Sub: Industries - State Aid to Industries - Kollegal Silk Filatures Ltd., - Winding up under Section 162 of the Indian companies Act, - High Court of Madras - O.P. No. 6 of 1949

Ref: From the Govt. Solicitor, No. 4824 d/13-12-49. p.61 ct

The Govt. Solicitor is requested to state the stage at which the matter stands.

for SR 23-1-50 / 23.1.50

24/1/50

To the Govt. Solicitor Madras

N.R. 11/2/50

Department of Industries and Commerce.

From

The Director of Industries and Commerce, Madras.6.

To

The Secretary to Government, Development Department, Madras.

No.S.A.1352/47 dated 25-1-50.

7582 Dev/50

Sir,

Sub: State Aid to Industries - The Kollegal Silk Filatures Ltd., Kollegal winding up under Sec.162 of the Indian Companies Act.

Ref: Government Telephonic Message dated 24-1-50.

I have not received any intimation direct from the Kollegal Silk Filatures Ltd., Kollegal proposing to liquidate their Company voluntarily but the Sericultural Expert, Kollegal in his letter dated 2-1-50 has informed me that the Company is likely to move the High Court through their Defence Counsel that the petition presented by the Government may be withdrawn in as much as the Company has resolved itself to wind up voluntarily. I enclose herewith copies of letters received from the Sericultural Expert, Kollegal dated 2-1-50 and from the Government Solicitor, Madras dated 7-1-50. I also invite a reference to the letter dated 21-1-50 addressed by the Government Solicitor to me and copy sent to Government.

28.1.50

For Director of Industries and Commerce,
Madras.

r.n. 25.1.50.

Office of the Director of Industries
and Commerce, Madras, dated 25-1-50.

Copy of the letter No.3848-B.2/45 dated 2nd January, 1950 from the Sericultural Expert, to this office.

Sub: State Aid to Industries Act - The Kollegal Silk Filatures Ltd., Winding up;
Ref: This office letter No.3848 B.2/45 dated 23rd December 1949.

I beg to report that I attended the meetings of the Board of Directors and of the Share holders of the Kollegal Silk Filatures Ltd., on 29th December 1949 at Bangalore. I submit a copy of the proceedings of the Extraordinary General Body meeting of the Company, for favour of information. The General Body has resolved subject to the sanction of the High Court of Madras, the Kollegal Silk Filatures Ltd., be wound up voluntarily. It was possible to authorise payment of 16 annas in the rupee to the share holders, and it is therefore, satisfactory to note that the moneys of the share holders would be in tact. As Government money in respect of shares held in the Company is going to be returned in full, I submit that there may not be need now to press our petition for the winding up of the Company in the High Court. I, therefore, submit that if the Director is agreeable to my proposls, necessary action may be taken as the case has been posted to 9-1-1950 for hearing by the High Court. I learn that the Company is likely to move the High Court through their Defence Counsel that the petition presented by Government to the High Court may be withdrawn in as much as the Company has resoved itself to wind up voluntarily.

The proceedings of the meeting of the Board of Directors of the General Body meeting of the shareholders of the Company will be submitted as soon as the copies are received from the Managing Director of the Company.

-----x-----

Copy of proof Extraordinary General Body Meeting of the Shareholders of the Kollegal Silk Filatures Ltd., held at 4-30 P.M on Thursday the 29th December 1949 at the office of the Messers Aiyar & Co., Chamber of Commerce Buildings, Bangalore City.

Members present:—
Dewan Bahadur A.Appadurai Pillai.
Sri M.S.Ganesa Aiyar.
Sri A.T.Janakirama Mudaliar.
Sri R.Venkataraman.
Sri C. V. Krishnamoorthy.
Sri M.K.Cheluvarajan.
Sri H.Sivaswami Aiyar.
Sri G.Ramaratham.
Sri R.Ranga Rao.

By Proxy:—

His Excellency the Bishop of Mysore R.Feuge	1800 shares.
Dr. G.J. Vaz	40 shares.
Srimathi Subbulakshmi, C/O Sri R.Muthuswami Aiyar	60 shares.
Dr.C.G.Parthasarathy Naidu	25 ordinary & 5 deferred shares.
Miss G.Jayalakshmi	100 shares.
Miss G.Sulochana	100 shares.-do-
Sm. S.G.Kuppammal	100 -do-
Sri S.Krishnaswami	100 -do-

Resolved that Dewan Bahadur A. Appadurai Pillai do occupy the chair.

P.T.O.

Proposed by: Sri M.S.Ganesa Aiyar.
Supported by: Sri. R.Venkataraman.

Sri Appadurai Pillai occupied the Chair.

1. Resolved that subject to the sanction of the High Court of Madras, the Kollegal Silk Filatures Ltd., be wound up voluntarily and Sri M.S.Ganesa Aiyar be the Liquidator of the Company.

2. His remuneration be fixed at Rs.250/- per mensem in addition to the usual office expenses and other incidental charges for a period of six months.

Proposed by: Sri R.Venkataraman.
Supported by: Sri G.Ramaratnam.

3. Subject to the approval of the High Court of Madras, the voluntary Liquidator be authorised to distribute 16 annas in the rupee to the Shareholders now.

With a vote of thanks to the Chair the meeting terminated.

----x----

Copy of the letter No.140 dated 7th January 1950 from the Government Solicitor, Madras to the Sericultural Expert, Kollegal and copy to this office.

Sub: Industries - State Aid to Industries Act - Kollegal Silk Filatures Limited - Winding up under section 152 of the Indian Companies Act - High Court of Madras - O.P.No.6 of 1949.

With reference to the above petition and my letter of the 13 th ultimo, I confirm having wired to you today as follows:--

"YOUR PRESENCE IN COURT NINTH INSTANT NOT NECESSARY WRITING"

The learned Advocate General suggested to me that the petition may be taken up for hearing on the 16th instant and in the circumstances I had intended to request the learned Judge to adjourn the petition to that date and therefore your presence in Court on the 9th instant is not necessary.

In the meantime I received from the Director of Industries and Commerce, Madras, a copy of your letter to him No.3848 B.2/45 dated the 2nd instant from which I notice that the company now passed a resolution for its voluntary winding up. The Advocate for the company has sent to me a copy of an application which he intends moving before the Court on the 9th instant praying for directions of the court permitting the voluntary winding up of the company. In your letter to the Director of Industries and Commerce you stated that the shareholders of the company will be paid in full. I presume that you have satisfied yourself that the company has its hands sufficient assets to do so. If this is correct, then it appears to me to be purposeless to press the petition for winding up now pending in Court. I shall however advise the Director of Industries again in the course of next week and when the application is moved in Court on the 9th instant I shall request the learned Judge to grant me time till the 16th instant to enable me to consider the question.

----x----

r.n. 25.1.50-

True Copy/

C.D.Balasundaram

URGENT

75

Post copy of telephone messa[illegible] 28th January. 1950.

From The Government Solicitor,
High Court House,
Madras.

To The Deputy Secretary to the Govt. of Madras,
Development Department,
Fort St. George, Madras.

Sub: Industries - State Aid to Industries - the Kollegal Silk Filatures Ltd. - Winding up under section 162 of the Indian Companies Act - Ref. Your telephone message dated 24th instant.

p.67 above

Your presumption is correct. The company has passed a resolution for its voluntary winding up and an application seeking the directions of Court to go into voluntary liquidation has been filed by the company. The learned Advocate-General whom I have consulted has expressed the opinion that the application for the voluntary winding up of the company should be opposed in view of the stand hitherto taken by Government. A copy of his opinion is enclosed.

p.77 below

CD/RV

B. M. Small
Government Solicitor.

COPY.

77

From

Sri K. Rajah Iyer,
Advocate-General,
Madras.

To

The Government Solicitor,
High Court,
Madras.

- -

Ms.No.41-1 dated 25-1-1950.

Sir,

High Court, Madras - O.P.No.6 of 1949 -
Kollegal Silk Filatures Limited - Your
letter No.351 dated 21-1-1950.

The suggestion for voluntary winding up was made in the counter affidavit filed in O.P.6 of 1949. Nevertheless in the reply affidavit filed by Mr.T.M.S. Mani, Director of Industries, it was stated that the winding up should be subject to the supervision of the Court. So, that position may be adhered to. For this purpose the application will have to be opposed.

Yours faithfully,

Sd. K. Rajah Iyer.

Advocate-General.

79

Dev. Dept.

Special

Memo No.73683 DII/49- 18 dated 31-1-1950

Sub:Industries - State Aid to Industries -The Kollegal Silk Filatures Ltd. - Winding up under Section 162 of the Indian Companies Act.

pp69-70 Cf
pp75-77 Cf

Ref:-From the Govt. Solicitor, letter No.348 d/21-1-50 and p.c. of T.M. dated 28-1-1950.

---

p.77 Cf

The Govt. Solicitor is informed that the Govt. agree with the opinion expressed by the Advocate General that the winding up of the company should be subject to the supervision of the Court and that the application for the voluntary winding up of the company should be opposed.

Dpd by Spl. messenger 31.1.50.

28-1-50

28-1-50

the Govt.Solicitor.

28/1/50

28-1-50

by to the D.I. & C.
Cw.r.t his letter
S.A.1352/47 & 25/50)
with copy of pp 75-77Cf.

Dpd W.E.
31.1.50.

81

From
H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor,
Madras.

To
The Secretary to the Government
of Madras,
Development Department,
Fort St. George, Madras.

No. 456. Dated 31st January 1950.

Sir,

Industries - State Aid to Industries - The Kollegal Silk Filatures Ltd. - Winding up under section 162 of the Indian Companies Act.

p.79 above

I acknowledge receipt of your memorandum of today's date and note that the application for the voluntary winding up of the above company should be opposed. Though the petition had been adjourned to today the same was not in the list of causes for today and may be posted before the Court tomorrow when I shall request the learned Judge to fix a suitable date next week for the hearing of the petition and shall communicate the same to yourself tomorrow. The presence in Court of the Sericultural Expert, Kollegal, at the hearing of the petition will be necessary.

Yours faithfully,

C. Jagadisan

for Government Solicitor.

CD/SM.

457 Copy for information to the Director of Industries & Commerce, Madras.

81

From
H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor,
Madras

To
The Secretary to the Government
of Madras,
Development Department,
Fort St. George, Madras.

ASSISTANT SECRETARY TO GOVT
1 FEB 1950
MADRAS

No. 456 Dated 31st January 1950.

Sir,

Industries - State Aid to Industries - The Kollegal Silk Filatures Ltd. - Winding up under section 162 of the Indian Companies Act.

p.79 above

I acknowledge receipt of your memorandum of today's date and note that the application for the voluntary winding up of the above company should be opposed. Though the petition had been adjourned to today the same was not in the list of causes for today and may be posted before the Court tomorrow when I shall request the learned Judge to fix a suitable date next week for the hearing of the petition and shall communicate the same to yourself tomorrow. The presence in Court of the Sericultural Expert, Kollegal, at the hearing of the petition will be necessary.

Yours faithfully,
H. Government Solicitor.

CD/SM.
457 Copy for information to the Director of Industries & Commerce, Madras.

Very Urgent.

From

H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor,
Madras.

To

The Secretary to the Government of
of Madras,
Development Department,
Fort St. George, Madras.

Dated 2nd February 1950.

Sir,

Industries . State Aid to Industries - The Kollegal Silk Filatures Ltd. - Winding up under section 162 of the Indian Companies Act.

I refer to my letter No. 456 of the 31st ultimo. The above petition came up before His Lordship Mr. Justice Mack yesterday and the Advocate for the Company represented to the Court that he had filed a petition for permission to the Company to go into voluntary liquidation. On my representing to the learned Judge that Government intended to oppose the application and file a counter affidavit, the learned Judge observed that the application filed by the Company cannot be ordered and took up for consideration the main petition for the winding up of the above Company. Since the main facts were not in dispute His Lordship passed orders directing the Company to be wound up under the provisions of section 162 (VI) of the Indian Companies Act. The learned Judge has also directed that the order of Court should be advertised in the Fort St. George Gazette. The costs of Government and the Company of the petition and the application filed by the Company were directed to be paid out of the assets of the Company. The Official Receiver, Madras, has been appointed official Liquidator of the Company and he will immediately take possession of all the assets belonging to the Company.

84

I have informed the Official Receiver that the Sericultural Expert, Kollegal (who is one of the Directors of the Company) will render to the Official Receiver's representative all the assistance that may be necessary in taking possession of the assets of the Company.

A The copy of the order of Court for which I have applied will be sent to you in due course.

Yours faithfully,

H. M. Jones

Government Solicitor.

CD/SM.

487 Copies for information to (1) The Director of Industries & Commerce, Madras.

488. (2) The Sericultural Expert, Kollegal. He is requested to assist the representative of the Official Receiver and help him to obtain possession of all the assets and records of the Company.

M

487. (3) Registrar of Joint Stock Companies, Madras, in continuation of my letter No.5029 dated the 23rd December 1949

9162 Dn/50 (6.2.50) 85

From
Sri K.Kuttikrishna Menon,
Government Pleader,
M a d r a s.

To
The Secretary to Government,
Development Department,
Fort St. George, Madras.

No. 99 Dated, 31st January 1950.

Sir,

Sub: Suits - Kollegal Silk Filatures Ltd., Kollegal - Acquisition of properties by Government of Madras - Decree in O.S. 2/46 filed in the District Court, Coimbatore - Appeal No.567/46 & C.M.A.334/47 - Judgment.

Ref: Memorandum No. 73683 DII/49-15 dated 24-1-1950. P 7(a) above

---

Certified copies of judgment and decree applied for have not yet been received from the High Court. They will be sent immediately on receipt from the High Court.

K Kuttikrishna Menon
31. 1 '50

Government Pleader.

Dev. Dept.
N.R. 20-2-1950.

6.2.50 7/2/50 7.2.50

SPECIAL ASSISTANT SECRETARY TO GOVERNMENT
8 FEB 1950
DEVELOPMENT DEPARTMENT

MINISTER FOR INDU
8-FEB 1950
GOVERNMENT OF MAD

In the High Court of Judicature at Madras.

Appellate Jurisdiction.

SECRETARY TO G
8 FEB 1950
DEVELOPMENT DEPT.

C.M.P.No. of 1950

in

A.A.No. of 1950.

agt.

O.P.No. 6 of 1949
High Court, Madras.

11061

In the matter of the Kollegal Silk Filatures Ltd.,
and
In the matter of the Indian Companies Act,1913.

The Kollegal Silk Filatures Ltd. (Respondent-appellant):Petr.

Vs.

The Province of Madras. ... (Petitioner-respondent):Respdt.

Affidavit filed on behalf of the petitioner.

I, A.Appadurai Pillai, son of C.Purushothama Pillai, Christian, aged about 73 years, Retired District Collector, and Director of Industries, Madras and Ex-member, Madras Legislative Assembly, residing at No.196. Poonamallee High Road, Kilpauk, Madras, do hereby make oath and say as follows:—

1. The Kollegal Silk Filatures Limited was an Industrial concern incorporated in 1937 and doing business in the manufacture of silk filatures at Kollegal. It was producing silk and supplying it to the Government in 1942-1943. In order to encourage the Industry the Government had even at the inception of the Company taken 10% of the shares.

2. During the war the Government of Madras requisitioned and acquired it in 1943 under Sec.75 A of the Defence of India Rules and worked the Factory as a going concern. As the Appellant did not agree to the compensation offered by the Government viz., Rs.81,811--9--0 inclusive of interest, the

Government filed O.P.17/1944 before the Arbitrator Mr.Choudari the District Judge of Coimbatore. He held that the offer of the Government was proper. The appellant company appealed in C.M.A.334 of 1947 to this Hon'ble Court which held that the arbitrator had not valued the factory and the machinery lands etc on a proper basis and the decision of the Arbitrator was set aside, and the matter remanded to the Arbitrator for fresh disposal.

3. In the meanwhile, the appellant had filed O.S.No.2 of 1945 on the file of the District Judge, Coimbatore, questioning the validity of the requisition and acquisition of the appellant's business under the Defence of India Rules. The District Judge of Coimbatore held that the Government acted within its powers in making the requisition and acquisition. The appellant appealed in A.S.No.567/46 to this Hon'ble Court which held that whatever might have been the legal position before, an Act of Parliament of 1946 had authorised the requisition and acquisition and so dismissed the appeal. But in this suit; the District Judge had pronounced that the compensation awarded should have been increased by at least one lakh of rupees more

4. During the pendency of the said two appeals in this Hon'ble Court the respondent filed on 23-12-48 O.P.No.6 of 1949 on the file of the High Court for winding up the above company under Section 162(vi) of the Companies Act. The appellant resisted the above winding up and the Court was pleased to adjourned it from time to time to await the result of the above two appeals, viz., C.M.A.334/47 and A.S.567/46.

5. After the decision of the said two appeals, the compa held an Extra-ordinary meeting of the General Body on

the 29th December 1949 to consider the position.

6. At that meeting, the representative of the respondent was also present. I was voted to the Chair. 9 shareholders who held 2436 shares were present personally. 8 other shareholders holding 2330 shares were present by Proxy. It was resolved that:-

"(1) Subject to the sanction of the High Court of Madras, the Kollegal Silk Filatures Limited., be wound up voluntarily and Sri Ganesa Aiyar be the Liquidator of the Company;

(2) His remuneration be fixed at Rs.250/- per mensem in addition to the usual office expenses and other incidental charges for a period of six months;

(3) Subject to the approval of the High Court of Madras, the Voluntary Liquidator be authorised distribute 16 annas in the rupee to the share-holders now.

7. The appellant thereupon filed application No. 224 of 1950 in the above O.P.No.6 of 1949 for directions to wind up the above company voluntarily and in pursuance of the above resolution.

8. The main purpose of the above resolution was this:- The Company has now liquid cash of Rs.1,82,000/-. For ayi the shareholders at the rate of 16 annas in the Rupe a sum of Rs.1,78,000/- is required. That amount can aic immediately. Mr. Ganesier who is to be the Liquidato already the Managing Director and he has the list o holders and every other facility for speedy distri Th *compensation* matter which is pending before the Ar

as mentioned in para 2 above has to be proceeded with interest in as much as the Company stands to gain considerably --- to the extent of about one lakh of rupees-- as held by the learned District Judge in O.S.No.2 of 1945 abovesaid. The cost of liquidation must be kept within the smallest limits. The shareholders will then get about 8 as more as dividend.

9. I also interviewed the Hon'ble the Minister in Charge and discussed the matter with him. He was agreeable to the following terms

"In case the Company deposits into court the amount required to meet the claims of the shareholders and creditors in full and puts in a petition to the High Court suggesting the appointment of their nominee as a Liquidator subject to the supervision of the Court, in the interest of economy, and a copy of such petition is sent to Government, the Government may not have any objection to the appointment of such person as Liquidator.

10. The appellant was agreeable to that also.

11. When the petition O.P.No.6 of 1949 and Application No. 324 of 1950 came up for disposal, the appellant's advocate stated what had happened and requested that the company be wound up voluntarily subject to the safeguard abovesaid. The respondent requested for time and stated that he had no definite instructions; and also that it is better to have the winding up made compulsory.

12. The learned Judge, notwithstanding the appellant's counsel's arguments, stated that as the winding up was to be made as the result of the action of the Government and involuntarily so far as the appellant was concerned, he would

the 29th December 1949 to consider the position.

6 At that meeting, the representative of the respondent was also present. I was voted to the Chair. 9 shareholders who held 2436 shares were present personally. 8 other shareholders holding 2050 shares were present by Proxy. It was resolved that:-

"(1) Subject to the sanction of the High Court of Madras, the Kollegal Silk Filatures Limited., be wound up voluntarily and Sri. Ganesa Aiyar be the Liquidator of the Company;

(2) His remuneration be fixed at Rs.250/- per mensem in addition to the usual office expenses and other incidental charges for a period of six months;

(3 Subject to the approval of the High Court of Madras, the Voluntary Liquidator be authorised to distribute 16 annas in the rupee to the shareholders now."

7. The appellant thereupon filed application No. 224 of 1950 in the above O.P.No.6 of 1949 for directions to wind up the above company voluntarily and in pursuance of the above resolution.

8. The main purpose of the above resolution was this:- The Company has now liquid cash of Rs.1,82,000/-. For paying the shareholders at the rate of 16 annas in the Rupee a sum of Rs.1,78,000/- is required. That amount can be paid immediately. Mr. Ganesier who is to be the Liquidator was already the Managing Director and he has the list of shareholders and every other facility for speedy distribution. The compensation matter which is pending before the Arbitrator

as mentioned in para 2 above has to be proceeded with interest in as much as the Company stands to gain considerably --- to the extent of about one lakh of rupees-- as held by the learned District Judge in O.S.No.2 of 1945 abovesaid. The cost of liquidation must be kept within the smallest limits. The shareholders will then get about 8 as more as dividend.

9. I also interviewed the Hon'ble the Minister in Charge and discussed the matter with him. He was agreeable to the following terms

> "In case the Company deposits into court the amount required to meet the claims of the shareholders and creditors in full and puts in a petition to the High Court suggesting the appointment of their nominee as a Liquidator subject to the supervision of the Court, in the interest of economy, and a copy of such petition is sent to Government, the Government may not have any objection to the appointment of such person as -- Liquidator.

10. The appellant was agreeable to that also.

11. When the petition O.P.No.6 of 1949 and Application No. 224 of 1950 came up for disposal, the appellant's advocate stated what had happened and requested that the company be wound up voluntarily subject to the safeguard abovesaid. The respondent requested for time and stated that he had no definite instructions; and also that it is better to have the winding up made compulsory.

12. The learned Judge, notwithstanding the appellant's counsel's arguments, stated that as the winding up was to be made as the result of the action of the Government and involuntarily so far as the appellant was concerned, he would

make the winding up compulsorily and has so made the order for compulsory winding up under Sec.162(vi) of the Act.

13. The company has preferred the above appeal.

14. In the interview that I had with the Hon'ble The Minister even subsequently, he told me that the Government had no objection to the Voluntary Liquidation subject to the ~~sanctions~~ safeguards stated in para 9 above.

15. I submit that in the interests of the shareholders including the respondent. there will be much saving of money, speedy distribution, and safeguarding of the company's interests if the liquidation is voluntary and entrusted to Mr. Ganesa Aiyar as he Liquidator.

16. I therefore submit that the resolution of the above company be sanctioned by this Hon'ble Court subject to the safeguards mentioned in para 9 abovesaid.

17. I have applied for a copy of the Order and Judgment in the above O.P. urgently but I have not yet obtained them as they are not yet ready. I undertake to file the certified copies of the Order and Judgment as soon as they are obtained. Therefore, the production of the certified copy of the order and judgment may be dispensed with for the present.

18. Under the above circumstances, it is just and necessary that this Hon'ble Court should be pleased to direct stay of operation of the order passed by the Hon'ble Mr.Justice Mack. on the 1st February 1950 in the above O.P.No.6 of 1949 pending disposal of the above O.S.Appeal.

Solemnly affirmed at the Office of the Registrar) High Court, Madras, before me, this 8th day of February 1950, and signed in my presence. ..)

K. S. Sankaranarayana
Advocate for Appellant-petr.

Krishnaswamy 8/2/50
Before me.

Commissioner

92

A53

High Court, Madras.

C.M.P.No. /1950

in

O.S.A.No. /1950

agt.

O.P.No. 6 /1949
High Court, Madras.

Kollegal Silk Filatures Ltd...Appellan
Petr.

Vs.

The Province of Madras.....Respondent
Respdt.

Affidavit. Filed
8/2/50

Mr. K.S.Sankara Iyer,

Counsel for Petr(appellant).

K. S. SANKARA AIYAR, B.A., B.L.
ADVOCATE

Office: 59, LAW CHAMBERS. HIGH COURT

"SADHANA"
9-E, EDWARD ELLIOT ROAD,
MYLAPORE, MADRAS, 4.

93

11th Febry 1950.

To
The Hon'ble The Minister,
Industries & Commerce,
Government of Madras.

Sir,

Ref: Kollegal Silk Filatures Ltd - Winding up matter.

With reference to the above, I filed an appeal against the Order of Mr.Justice Mack dated the 1st February 1950 and moved for suspension of operation of the Order on 10-2-1950. Their Lordships Mr.Justice Horwill and Mr.Justice Balakrishna Iyer have ordered notice to the Crown Solicitor and directed Interim Suspension of the said order of Mr.Justice Mack. They have posted the petition for final hearing on 14-2-1950. A copy of the affidavit which I have filed in support of the application for suspension of the operation of the Order of Mr.Justice Mack, has also been sent to you. In the circumstances set forth in the said affidavit, I request you to be good enough to issue instructions to the Crown Solicitor to agree to an order on the lines stated in paragraph 9 of the affidavit which sets out the conditions indicated by you. Since the matter comes up for hearing on the 14th, may I request you to treat this as urgent. A certified copy of the stay order is likely to be received by me only on the 14th and as soon as I obtain it I shall send it to you. I have already communicated the stay order to the Crown Solicitor and to the Official Liquidator for their information.

Yours Sincerely,

K. S. Sankaraiyer

Dev. Dept. 95

Special.

Issue to-day and despatch by Spl. messenger for first delivery to-day. p.93 cf.

11-2-50

Memo No. 73683 Dev/49-19 dated 11-2-1950

Industries - State Aid to Industries - The Kollegal Silk Filatures Ltd. - Winding up.

Ref: From Sri K.S.Sankara Aiyar, B.A.B.L., Advocate Madras dated 11-2-1950.

Std

pp 87-92 cf.

A copy of the letter from Sri K.S. Sankara Aiyar cited, together with a copy of the affidavit dated 8-2-1950 filed before the High Court on behalf of the Kollegal Silk Filatures Ltd., is forwarded to the Govt. Solicitor, Madras. He is informed that, if a stay order has been granted by the High Court as stated by the Advocate, he may agree to the passing of an order by the High Court at its final hearing on the 14th instant on the lines stated in paragraph 9 of the affidavit.

To A on p 93 cf

11.2.50

p 90 cf

The Govt.Solicitor,Madras
(with a copy of pp 87-92 and p.93 c.f.)

11-2-50

Copy to the D.I. & C.(with a copy of pp 87-93 c.f.)

Dept. given immediately 12.2.50

Copy to Sri K.S.Sankara Aiyar., B.A., B.L., Advocate, Sadhana, 9 E. Edward Road, Mylapore

11/2/50

11.2.50

1- ~~105~~ 97

From

H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor,
Madras.

To

The Secretary to the Government of Madras,
Development Department,
Fort St. George, Madras.

1.3202 55/50
14.2.50.

ASST. SECRETARY TO GOVERNMENT
16 FEB 1950
DEVELOPMENT DEPARTMENT

No. 699 Dated 14th February 1950.

D2

Industries - State Aid to Industries - The Kollegal Silk Filatures Limited - Winding up.

I am in receipt of your memorandum No. 73683 DII/49-19 dated the 11th instant. ↳ 95 above

The above appeal came up before the Court this morning and on my representing to the learned Judges that Government has no objection to the passing of an order on the lines stated in paragraph 9 of the affidavit in support of the application for stay the learned Judges made the following order:- ↳ 9a above

"By consent (1) the operation of the order of winding up will be stayed till the 6th March 1950,

(2) the Liquidator of the Company, Mr. Ganesha Iyer, will receive the amount of the fixed deposits and out of the amount pay into Court the sum of Rs.1,78,000/- and await further instructions of the Court".

2. The application will be posted before the Court again on the 6th proximo and if by that time the amount mentioned above is paid into Court, the learned Judges will make an order appointing Mr. Ganesha Iyer as the Liquidator, subject to the supervision of the Court. As the agreement come to between Mr. Appadurai Pillai and the Honourable Minister for Industries set out in paragraph 9 of the affidavit does not state whether Government agrees to the Company going into voluntary liquidation with a liquidator subject to the supervision of the Court or whether Government agrees only to the appointment of the Company's nominee as liquidator in the compulsory winding up ordered by the Court, I shall be glad if you will let me know at an early date whether I may agree to the order for compulsory winding up being set aside and the Company being permitted to go into voluntary liquidation with a Liquidator who will be subject to the supervision of the Court. — do —

A

Yours faithfully,
C. Doraiswamy
for Government Solicitor.

CD/SM.

700. Copies for information to the Director of Industries & Commerce, Madras, (2) The Sericultural Expert
701. Kollegal, South India and (3) The Registrar of
702. Joint Stock Companies, Madras.

Very Special -

99

Issue at once by Special Messenger
fdSR
2.3.50

Dev. Dept.

Memo No. 73683 D II/49-21 dated 2-3-1950.

Sub: Industries - State Aid to Industries - The Kollegal Silk Filatures Ltd., - Winding up

Ref From the Govt. Solicitor No. 699 d/14-2-1950.

p 97 cf

The Govt. Solicitor is informed that the Govt. agree only to the appointment of the company's nominee as Liquidator in the compulsory winding up already ordered by the High Court

fdSR
2.3.50

Ho. f. 16 n. b
'A' on p 83 cf

Dpd by messenger to G.S.
fb
2.3.50.

To the Govt. Solicitor,
Madras.

Copy to the D.T.S.C.

Dpd
fb
2.3.50.

Sd
2/3/50

101

From
H. M. Small Esq.,
M.A.,L.B.,
Government Solicitor,
Madras.

To
The Secretary to the Government
of Madras,
Development Department,
Madras.

2011 Pol
9-3-50.

No. 1018. Dated 6th/7th March 1950.

Sir,

Industries - State Aid to Industries - The Kollegal Silk Filatures Ltd - O.P.No.6 of 1949 - O.S.A.No.6 of 1950 - High Court, Madras.

I refer to my letter No. 699 dated the 14th ultimo. Though the learned Judges directed that the above appeal should be posted before the Court today, the same was not in the list of causes for the day. The Advocate for the Company however, by a special request, had the appeal posted before the Court this afternoon. On behalf of the Company it was represented to the Court that Mr. Ganeshayyar had sent to the Company's Advocate a cheque for the sum of Rs.1,78,000/- but that the amount could not be paid into Court today. At the request of the Advocate for the Company, time for payment of the amount into Court has been extended till the 13th instant on which date the appeal will be posted before the Court for final orders. The Advocate for the Company suggested in Court that the amount may be directed to be kept in deposit by the Liquidator in a separate account. On my representing to the learned Judges that I could not accede to the suggestion Their Lordships directed that the amount should be paid into Court on or before the 13th instant. When the appeal

comes up before the Court on the 13th instant I shall represent to the learned Judges that Government agrees to the appointment of the Company's nominee as Liquidator in the compulsory winding up already ordered by the High Court.

Yours faithfully,

C. Jayasuriya

Government Solicitor.

CD/SM.

103

ASSISTANT SECRETARY TO GOVERNMENT
15 MAR 1950

H. M. Small Esq.,
M.A.,LL.B.,
Government Solicitor
Madras.

To
The Secretary to the Government
of Madras,
Development Department,
Fort St. George, Madras.

No. 1210 Dated 13th March 1950.

Sir,

22607

Industries - State Aid to Industries - The Kollegal Silk Filatures Ltd - O. P. No. 6 of 1949 - O.S.A.No.6 of 1950.
High Court, Madras.

In continuation of my letter No. 1018 dated the 6th instant, I am to advise that the above appeal was taken up for hearing by the Court today. On behalf of Government it was represented to the learned Judges that Government has no objection to the appointment of the nominee of the Company as liquidator in the compulsory winding up already ordered by the Court. Contrary to expectations this was opposed by the Advocate for the Company who represented to the learned Judges that the appointment of the Company's nominee should be as liquidator in the voluntary winding up subject to the supervision of the Court. After hearing the arguments adduced on behalf of the parties the learned Judges passed orders appointing Mr. Ganesha Iyer as liquidator in the voluntary winding up subject to the supervision of the Court. In the course of the judgment their lordships observed that Government was unable to give any satisfactory reason why the Company should not be allowed into voluntary liquidation and that Government was only in the position of an ordinary shareholder. Under the order the voluntary liquidation

104

liquidatorx of the Company is entitled to payment out, for distribution to the shareholders of the sum of Rs.1,78,000/- deposited by him in Court. The learned Judges have held that Goverment's costs of the appeal and also of the original petition in the lower Court should beborne by Government.

B

A copy of the order for which I have applied will be sent to you on receipt of the same from Court.

A

Yours faithfully,

H. M. Quail

Government Solicitor.

CD/SM.

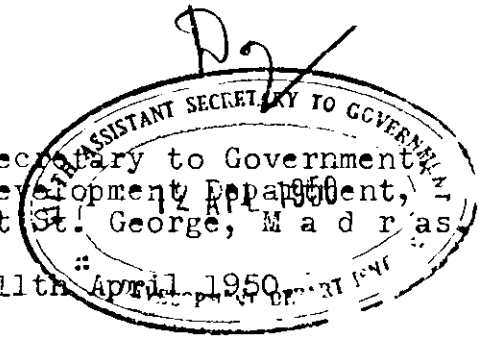
1211. Copies for information to (1) The Director of Industries & Commerce, Madras,

1212. (2) The Sericultural Expert, Kollegal, South India and

1213 (3) The Registrar of Joint Stock Companies, Madras

From
Sri K.Kuttikrishna Menon,
Government Pleader,
M a d r a s.

To
The Secretary to Government,
Development Department,
Fort St. George, M a d r a s.



No. 490 Dated, 11th April 1950.

Sir,

Suits - Kollegal Silk Filatures Ltd., Kollegal - Acquisition of properties by Government - A.S.No. 567/46 & C.M.A.No.334/47 Result - Copies of judgments - forwarded.

Ref:- Government Memorandum No.73683 DII/49-15, dated 24-1-1950 and my letter No. 99, dated 31-1-1950.

Certified copies of the judgments of the High Court in the above appeals are herewith forwarded.

K Kuttikrishna Menon
11.4.50

Government Pleader.

36/2

10

DEV. Dept.

Memo No: 73683 Dev/49-24 dt 1-5-1950

Sub: Industries – State Aid to Industries – The Kollegal Silk Filatures Ltd. – O.P. No. 6 of 1949 and O.S.A. No. 6 of 1950 – High Court, Madras.

Ref: From the Govt. Solicitor, No. 1210 dt 13-3-1950.

The Govt. Solicitor is requested to state when a copy of the order of the High court referred to in the letter cited may be expected.

1/5/50

To the Govt. Solicitor, Madras.

N.R. 1650.

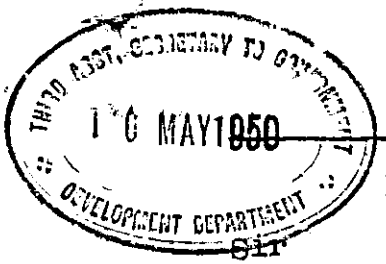
109

From

H.M.Small Esq., M.A.,LL.B.,
Government Solicitor,
Madras.

To

The Assistant Secretary to
Government,
Development Department,
Fort St. George.



No. 3247. Dated 8th May 1950. 41285 10.5.50

Sir

Industries - State Aid to Industries - The Kollegal Silk Filatures Ltd. - O.P.No.6 of 1949 and O.S.A.No.6 of 1950 - High Court, Madras.

p 107 above

I am in receipt of your Memorandum No.73683 DII/49-24 dated 1st instant. The High Court is now closed for summer vacation and reopens on 7th July next. However I will expedite the issue of the judgment and order and send same to you immediately I receive it from Court.

CD/DR

Yours faithfully

C. Jayaswamy
for Government Solicitor.

3248. Copy for information to the Director of Institutes of Commerce, The file of papers, Balance sheets and Directors' Reports sent to me in this connection are herewith returned.

Dev Dept-

N.R. 11-6-1950.

10.5.50 11/5/50 11/5/50

Dev. Dept. III

Issues
R.O.C.
15.7.50

Memo. No 73683 D II/49-25 dated 15-7-1950

15/7/50 SS/15/7

Sub: Industries - State aid to industries - The Kollegal Silk Filatures Ltd. - O.P. No. 6 of 1949 and O.S.A. No. 6 of 1950 - High Court, Madras.

P 109 cf. Ref: From the Crown Solicitor No. 3249 d/ 8-6-50.

The Crown solicitor is requested to state when ~~the issue of~~ the judgment and order promised in the letter cited may be expected.

To. The Crown Solicitor

15/7/50

N.R. ~~30-6-50~~ 15-8-50

HJS 13-6-50

S 14.6.50

AG.

As the High Court is closed for Summer vacation, the remainder may please wait on 15/7/1950. S 14.6.50

13/7/50

43683/49.

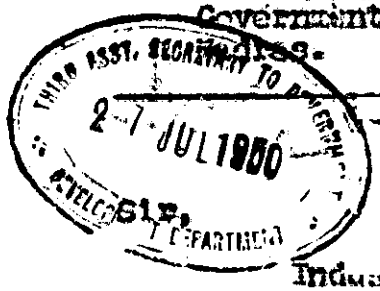
113

From

H. H. Small Esq.,
M.A., LL.B.,
Government Solicitor,
Madras.

To

The Director of Industries & Commerce,
Mackay's Gardens, Cathedral Post
Mount Road, Madras 5



No. 4443 Dated 25th July 1950.

Sir,

Industries - State Aid to Industries - The Kollegal Silk Filatures Limited - O. P. No. 6 of 1949 - O. S. A. No. 6 of 1950. High Court, Madras. 9575

With reference to your letter SA.No.1362/47 dated the 18th instant, I have not up to date received a copy of the order of the High Court in the above appeal and the same will be sent to you immediately on receipt by me.

Yours faithfully,

H. M. Small

Government Solicitor.

CR/SE.

4444 Copies for information to (1) The Secretary to the Government of Madras, Development Department, Fort St. George, Madras, with reference to memorandum No. 73686 D II 49-29 dated the 15th instant.

p 111 above

4445. 2. The Registrar of Joint Stock Companies, Madras, with reference to his letter C.No.392/50 dated the 6th instant.

114

7365 पि /49

TO A.S.

Dev. Def(-)

The letter from the Govt. Solicitor on p. 113 above may be perused He may be reminded next on 28-8-1950, if necessary

28.7.50 29/7/50 28/7/50

115-116
30/8

PS
24/8/
issue
DD
29.8.50

Dev. Dept.

Memo No. 73683 Dev/49-26 dt 29-8-50

Sub: Industries — State Aid to Industries — The Kollegal Silk Filatures Ltd., — O.P. No. 6 of 1949 - O.S.A. No. 6 of 1950 - High Court, Madras.

Ref: From the ex-Govt. Solicitor No. 4414 dt 25-7-1950

p. 113 cf

The State counsel is requested to state whether a copy of the order of the High court in the above appeal has been received and if so, when it will/may be ~~expected~~ forwarded to us.

Dev
28.8.50

To
The State counsel,
Madras

N.R: 28/8/50.

C.F. 32 (a)—998,256—3-11-49.

Department

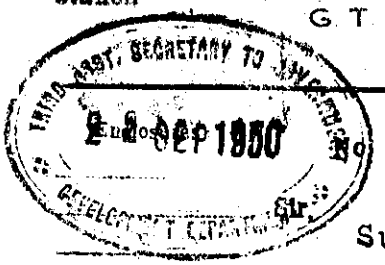
From (Name) **JOHN & ROW,**
Designation STATE COUNSEL FOR THE GOVERNMENT OF MADRAS,
Station 337, THAMBU CHETTY ST. G. T. MADRAS.

Received Registered

To

The Assistant Secretary,
Development Department,
Government of Madras,
M a d r a s.

96422
22/9/50



Endorsement No DS:KS /287/52 dated 21st Septr. 1950.

Sub: INDUSTRIES-State Aid to Industries-The Kollegal Silk Filatures Limited-O.P.No.6 of 1949-O.S.A.No.6 of 1950-High Court, Madras.

Ref: Memorandum No.73683-D.II/49-26 dt/29-8-1950.

With reference to your above mentioned memorandum we have already forwarded the certified copies of the orders in the above O.P. and appeal to the Director of Industries and Commerce, Madras, under our letter No.310/50 dated 18th Ultimo.

Yours faithfully,

for L & Row

(State Counsel)

27/2/49

All issues 8v 28/2/50

Memo no. 73683 D. II. 49. 27 [illegible] 9. 50. Dev. Dept.

Subj:- Industries - State Aid to Industries. The Kollegal Silk [illegible] Filatures Ltd O. P. no. 6 of 1949 and O. S. A. no. 6 of 50 of the High Court - Certified Copies of the High Court orders.

The D. I & C is requested to submit to Govt. the certified copies of the High Court orders furnished to him by the State Counsel with his letter no. 310 - 50 d 18. 8. 50

To, A

The D. I & C.,
R. D. 12. 10. 50.

8v/27/9/50 28/9/50

28/9/50

28/9/50

121

Department of Industries and commerce

No.S.A.1352/47 dated 9th October, 50.

From:
The Director of Industries
and commerce, Madras.6.

To:
The Secretary to Government,
Development Department, MADRAS.9

104231

Sub: STATE AID TO INDUSTRIES-The Kollegal Silk Filatures Limited- Kollegal - O.P.No.6 of 1949- and O.S.A.No.6 of 1950 of the High Court - Certified copies of the High Court orders- Forwarded.

Ref: Government Memo.No.73683/DII/49-27 dated 18.9.1950.

I forward herewith the certified copies of the High Court orders furnished to me by the State Counsel as ordered in the Government Memorandum referred to above.

V. Venkatarayudu
12-10-50

for Director of Industries
and commerce

MNG/10/10/-

Industries andCommerce Department.

From
Sri M.T.Raju,Bar-at-Law.,I.C.S.,
Director of Industries and
Commerce,Madras.6.

To 55574
The Secretary to Government,
Development Department,
Madras.

-x-x-x

124

Copy of letter No.MVG/KRBM/ 51 dated 21-4-51. from the State Counsel,G.T.Madras. to the Director,of Industries and Commerce Madras.6

Sub: State Aid to Industries - The Mollegal Silk Filatures Ltd., Mollegal -Share amount.

Ref: Your letter No.I.A.6556/50 dated 7--4--51.

We are in receipt of your letter cited above and the enclosures/th reto.

The Liquidator had deposited the undisbursed amount payable to you as a share holder, into the Reserve Bank to the credit of the Companies Liquidation Account,you will have therefore only to apply to the High Court,Madras, which ordered the voluntary liquidation, for an order directing the payment out to you of the amount

Kindly let us have your instructions for making the necessary application.

/ true copy /

125

Copy of letter No.46-K dated 8-3-51. from the Asst.Registrar of Joint Stock Companies, Erode to the Director of Industries and Commerce, Madras.o.

Sub: The Kollegal Silk Filatures Limited (in liquidation)
Share certificates for refund.

NC Ref: Your letter No.S.A. 6656/50 dated 26-2-51.

The two share certificates (No.417 for 1750 ordinary shares and No.297 for 350 Deferred shares) are retransmitted herewith .

You can have the amount refunded only on production of an order from a competant court of law with reference to section 244 B(5) of the Indian Companies Act 1913 as the Liquidator has already remitted the amount into the Reserve Bank of India to the Credit of the companies liquidation account.

/ true copy /

4
16/5

very urgent-

issue in section today
DM
13.6.51

p 1 cf

para 2, p 1 cf

pp 103 104 cf (N)
Go No 4643, Dev
17-11-50

127 5
Dev.Dept.DII.

Memo No.55574 DII/51-2 dated 13-6-1951

Sub:-State Aid to Industries - The Kollegal Silk Filatures Ltd., Kollegal - Government share amount of Rs.17,850- Recovery of.

Ref:-From the D.I. & C. No. SA.6656/50 dated 16-5-1951.

The D.I. & C. is permitted to apply to the High Court of Madras for an order directing refund to the Government of Madras of the value of shares amounting to Rs.17,850/- held by the Government in the Kollegal Silk Filatures Ltd., Kollegal and to incur the expenditure therefor. He is requested to take immediate action to have the amount credited to the Govt

2. The High Court have ordered the winding up of the company as early as March 1950 - Vide the ex-Govt. Solicitor's letter No.1211 dated 13-3-1950 - and it is considered that steps should have been taken immediately to get refund of the value of the shares held by the Government in the Kollegal Silk Filatures Ltd. It is not clear why the amount has been allowed to be deposited in the Reserve Bank of India as "unclaimed" balance and whether the

p.t.o.

128

Liquidator did not issue any notice inviting claims from share-holders. The D.I. & C. is requested to report not later than 12.7.1951 why timely action was not taken for claiming the amount and who is responsible for the omission.

12.6.51

14/6/51

14/6/51

13/6

Ordered

To the D.I. & C.

14/6

Copy to the A.G this the

R.D. 12-7-1951. Fin Dept

1st Secy

12/6

1297

Industries and Commerce Department.

From
Sri M.T .Raju,Bar-at-Law.,I.C.S.,
Director of Industries and
Commerce,Madras.6.

To
The Secretary to Government,
Development Department,
Madras.

No. S.A. 6656/50. dated 29th June 1951.

72926

Sir,

Sub: State Aid to Industries - The Kollegal Silk Filatures Ltd., Kollegal - Government Share amount of Rs.17,850/- Recovery of - Regarding

Ref: Government Memo No.55574D,II/51-1 dated 13.6.1951.

The first intimation of the appointment of the Liquidator for the Kollegal Silk Filatures Ltd.,Kollegal was given to this office by the then Government Solicitor,Madras in his letter No.1210 dated 13-3-50 in which he had also reported that he had applied for a copy of the order of court and would send the same as soon as it was received by him. Next in his letter No.3247 dated 8-5-50 addressed to Government, the Government Solicitor reported that the High Court was closed for summer vacations and that the court order would be submitted on its receipt from the Court. He was reminded in the matter in my letter NO.S.A.1352/47 dated 18-7-50, and in his letter No.4443 dated 25-7-50(copy of which was submitted to Government direct by the Government Solicitor) the Government Solicitor stated that the copy of the order of the High Court was not received by him and that it would be furnished immediately on receipt from the Court. In the meanwhile, the post of Government Solicitor was abolished and Messrs.John & Row were appointed as State Counsel for the Government. The State Counsel,Madras furnished certified copies of orders in the suit and appeal in their letter No.DSTM.No.310/50 dated 18-8-50 which was received in this office on 23-8-50. From the above, it may be seen that it had taken the Government Solicit and State Counsel nearly five months to obtain the orders of the High Court in the matter. The certified copies of orders of High Court were submitted to Government with my letter No.S.A.1352/47 dated 9-10-50 with reference to Government Memo No.73683 DII/49-27 Dev. dated 28-9-50.

2. Sri M.S.Ganesa Iyer, the liquidator for the Kollegal Silk Filatures Ltd., Kollegal, without giving any prior intimation or any advance notice for claiming the share amount held by Government in the Kollegal Silk Filatures Ltd.,Kollegal, has sent to this office a post card dated 16-10-50, stating that if the amount of Rs.17,850/ - on the shares held by Government was not claimed by surrendering the Share certificates duly discharged immediately, the amount would be sent to Reserve Bank of India for deposit. Since the share certificates were previously deposited with the Reserve Bank of India, for safe custody, the Manager, Reserve Bank of India, was addressed in this office letter No.S.A.6656/50 dt. 30-10-50 for the return of share certificates and the liquidator was informed that soon on receipt, the Share Certificates would be forwarded to him for necessary action. In his letter No.Sec.16/9/3805 dated 1-11-50, the Manager, Reserve Bank of India,Madras informed me that the requisition for the return of the share certificates should be signed by me personally giving full particulars of the securities desired to be withdrawn together with the relative memo of deposit. Before the request of the Manager of the Reserve Bank of India, Madras could be complied with, Sri M.S.Ganesa Aiyar, the liquidator, intimated in his post card dated 7-11-50, which was received in this office on 10-11-50, that the undisbursed and unclaimed balance of share amount was deposited in the Reserve Bank of India on 1-11-50

/p.t.o./

and that the Assistant Registrar of Joint Stock Companies, Erode should be addressed to get back the share amount.

The Share Certificates were received by me on 20-2-51 from the Reserve Bank of India, Madras, with their letter No.S.T/17/17/888 dated 17-2-51 and the Assistant Registrar of Joint Stock Companies, Erode was addressed in my letter No.S.A.6656/50 dated 26-2-51 with the share certificates duly discharged. The Assistant Registrar of Joint Stock Companies, Erode replied that as the amount was already remitted by the liquidator into the Reserve Bank of India to the credit of the company's liquidation account, the amount could be refunded only on the production of an order from a competent court of law with reference to section 244 B(5) of the Indian Companies Act 1913.

From the above, it will be seen that timely action was taken throughout and that there has been no lapse on the part of this office in the matter

FOR DIRECTOR OF INDUSTRIES AND COMMERCE.

TRS/30/6.

C. No. 73683 Ex/49.

INDUSTRIES - State Aid to Industries Act - The Kollegal Silk Filatures Ltd - Winding up under Section 162 of the Indian Companies Act - Proposals of the Company for a compromise.

From the Govt. Solicitor, Madras No.2467 dated 9 1949.
From the D.I. & C. No.SA. 1352/47 dated 25-7-1949.
From the Govt.Solicitor, Madras No.2814 dated 3-8-1949.
From the Govt.Solicitor, Madras T.M. dated 6-8-1949.

To A.S.

The Kollegal Silk Filatures is a Joint Stock Company in which the Govt. have taken shares to the value of Rs.17,85 under the provisions of the Madras State Aid to Industries Ac The Sericultural Expert, Kollegal is the Govt. representative on the Board of Directors of the Company. From the beginning the Company was not working satisfactorily.

In 1943, the movable and immovable properties of the Kollegal Silk Filatures Ltd. were requisitioned and subsequen acquired by the Govt. on payment of compensation of Rs.79,961-7-0 as the Company was not able to keep up to the delivery programme in respect of the orders placed with it b the Govt. of India, Dept. of Supply for the supply of parachute fabric. The request of the Company for the return of its properties on the cessation of the hostilities was turned down by the Govt. The Company appealed to the High Court challenging the validity of the requisition and acquisition order and claimed damages. The appeal is pending.

As the Govt. have not had any return so far for their investment on shares in the Company and as the company existed only in name, the D.I. & C. submitted proposals in May 1946 for winding up the Company by an order of the Court. The question was examined in detail in consultation with Legal. It was considered that there were no strong grounds to justify an application for winding up the Company. However, in order to protect the interests of the Govt., the D.I. & C. was asked to state whether the shares held by the Govt. in the Company could not be sold in the open market. As the D.I. & C. reported that no one was willing to purchase the shares, it was finally decided to wait till strong

grounds were forthcoming justifying an application for winding up the company and the D.I. & C. was asked to obtain and forward the balance sheet of the Company as it stood on 30-6-1947.

From the balance sheet of the Company forwarded by the D.I. & C., it was found that the Company had incurred a net loss of Rs.3,826-2-6 for the year ending 30-6-1947. The Registrar of Joint Stock Companies was asked to state whether action could be taken by the Govt. for winding up the Company under Section 162 of the Indian Companies Act, and if not what steps should be taken to protect the shares held by the Govt. The Registrar considered that action could be taken by the Govt. for winding up the Company under Section 162 (vi) of the Indian Companies Act, and he also forwarded the opinion of the Govt. Solicitor, Madras who had agreed with the view of the Registrar. The Legal Dept. which was consulted, wanted to know the stage of the appeal preferred by the Company for the restoration of its property acquired by Govt. and whether, in the opinion of the Sericultural Expert, the Company had any chance of being worked profitably in case the factory was restored to the Company. The D.I. & C. reported that the appeal preferred by the Company was pending before the High Court and forwarded a copy of the report of the Sericultural Expert in which he had stated that there was practically no chance of the Company being worked on a statisfactory and profitable basis in case the factory ~~xxxx~~ was restored to the Company. At the instance of the Legal Dept., the Advocate General was asked to give his opinion as to whether the Govt. could file an application for winding up the Company before the appeal preferred by the Company for the restoration of its property before the High Court was ~~it~~ disposed of. The Advocate General stated that there was no objection to the filing of an application for winding up the Company before the disposal of the appeal by the High Court. As suggested by Legal, the Govt. Solicitor was instructed to file a petition in the High Court for winding up the Kollegal Silk Filatures Ltd., under Section 162 (vi) of the Indian Companies Act and to report the result to the Govt. The Govt. Solicitor accordingly ~~first~~ filed a ~~petitition~~ petition in the High Court.

2. In his letter dated 9-7-1949, the Govt. Solicitor reported that the petition which came up before the High Court on 4-7-1949 was adjourned by four weeks at the request of the Advocate for the Company He forwarded a copy of the proposals made by the Advocate of the Company for settlement of the matter out of court and enquired whether the Govt. are agreeable to the suggestions put forward by the Company. He also stated that the opinion of the Advocate General on the proposals made by the Company would be obtained and communicated to the Govt.

The D.I. & C. was asked to offer his remarks on the proposals made by the Company and his reply is at pp 13-14 c The Govt. Solicitor has also forwarded the opinion of the Advocate General on the proposals made by the Company and it is at p.23 c.f. He has also stated that the petition will come up before the Court on the 9th instant and that further adjournment will be obtained by him.

The D.I. & C. has examined the proposals made by the Company in detail and he is not in favour of accepting the proposals for the reasons stated by him on pp 13-14 c.f. The Advocate General however considers that, as the Govt. have already acquired the factory and as it has been stated in the petition filed by the Govt. that the Company cannot function except at a loss, the proposal of the Company to pa the Govt. a sum of money and take back the factory deserves serious consideration though he is not the proper judge as to the adequacy of the amount offered.

Submitted that the present net value of the capital block etc. of Kollegal Silk Filatures as estimated by the D.I. & C. is Rs.91,937-2-0 while the amount the company proposes to pay to the Govt. is Rs.60,000/- only. Apart from this, the Govt. have taken shares to the value of Rs.17,850/ in the Company under the Madras State Aid to Industries Act and have had no return on the investment so far. No body is willing to purchase the shares held by Govt. in the Company at their nominal value. As the shares have already lost some of their values, the object of the petition file

for winding up the Company was to make sure that the loss is arrested by as early as dissolution of the Company as possible. In case, the offer of the advocate of the Company is accepted and the property is restored to the Company, there will be further depreciation in the value of the shares as the Sericultural Expert, who is representing the Govt. on the Board of Directors of the Company and the D.I. & C. have stated that the Company cannot run the filature properly and profitably in view of the present precarious position of the silk industry. Further, for the reasons stated at 'M' on p.13 c.f., the D.I. & C. considers that it is expedient and beneficial to the large number of share holders that the Company is wound up immediately.

In the circumstances. it is for orders whether a copy of the D.I. & C's letter on pp 13-14 c.f. may be sent to the Govt. Solicitor and he may be informed that the suggestions put forward by the Company are not acceptable to the Govt. Legal and Finance may see for remarks.

We may now consult the D.I. again on the opinion of the Advocate General of Bangalore

A draft Memo is submitted for approval

(Issued as Memo No. 73683 SU/49-5d/10-8-49)

TO A.S.

The minutes of H.M (2nd) at 'A' on p.31 and the letter since received from the Govt Solicitor on pp 39-40 c.f may be perused

A' ... p 40 cf

A copy of this letter has been sent to the D.I.& C by the Govt. Solicitor. The attention of the D.I.&C may be invited to this and he may be asked to submit his reply to the Memo. on p. 29 cf before 20-8-1949.

A copy of the counter affidavit on pp 31-37 above filed by the Managing Director, The Kollegal Silk Filatures Ltd., Kollegal may be forwarded to the D.I.& C for information.

Subject to orders, a draft Memo is submitted below for approval.

Sd. 11.8.49. 11.8.49

Sd 11.8.49

PP41-42 cf (Issued as Memo. No. 73683 Dev/49-6 d/11-8-49)

PP43-44 cf (From the D.I.& C. No. SA 1352/47 d/11-8-49)

To A.S.

The reply from the D.I. & C. on pp 43-44 c.f. may be perused. He adheres to the view taken by him in his previous letter at pp 13-14 c.f. that the compensation offered by M/s Kollegal Silk Filatures Ltd., for the return of the factory to them is far from adequate, that there is no possibility of the Company being able to work their factory profitably even if they regain possession now and that the return of the factory to the company will make it difficult to work the Govt. Silk Filatures again when conditions improved. He has also stated that, as Govt. funds are invested in the company, the return of the factory to the company will mean that the Govt. will have to share the losses that are sure to be incurred by attempts to work the factory at present. In the circumstances, it is for orders whether the Govt. Solicitor may be informed that the proposals made by the Company are not acceptable to the Govt.

p 13 cf

A' ... p 13 cf

✓ p 6 cf

b/

C No 73683 Dev/49
D C Fox No 107

Legal and Finance may see fore remarks.

16.8.49 16.8.49

Ohas see the note from Mr Lamb

17849 D.S

The terms offered by the company are not acceptable

17.8.49

Legal / Fin

Dev U 0 73683 Dev/49-7
17.8.49.

LEGAL DEPARTMENT.

In view of the circumstances detailed by the Director of Industries and Commerce on pp.43-44 c.f. this Department agrees with Development that the present proposal of the company need not be accepted by Government. The question, however, is one of policy. ~~Development may consult Finance also in the matter~~

17.8.49

Finance

Fin (Exp A)

Finance may also agree with Development that the present proposal of the Company need not be accepted by Govt

18.8.49

8529 Fin U 0. 53759 Exp A
18.8.49

Dev.

Notes from page 1 above may be perused. A draft Memo. to the Govt. Solicitor is submitted for approval.

18.8.49

19.8.49 S

Fin (Exp)

Fin (Fin)

ASSISTANT SECRETARY 10459 17 AUG 1949 12.45PM LEGAL DEPARTMENT

Legal U 0 10459/49-1
17/8/49.

ASSISTANT SECRETARY TO GOVERNMENT 53759 17 AUG 1949 FINANCE DEPARTMENT

p. 6 CP 5.45PM

I cert true

SECRETARY TO GOVERNMENT 25 AUG 1949 DEVELOPMENT DEPARTMENT

73683/49 Dev. Dept.

p.45 cf (Issued as letter No. 73683 DII/49-8 d/25.8.1949).
p 51 cf (From the Govt. Solicitor, Madras No.4067 d/1.11.1949).

To A.S.

The letter from the Govt. Solicitor on p.51 c.f. may be perused. The Govt. Solicitor has stated that the petition filed for winding up the Kollegal Silk Filatures Ltd., under section 162 of the Indian Companies Act, which came up before the High Court on the 10th ultimo, has been adjourned, at the request of the Advocate for the respondent, till after the disposal of the appeal filed by the respondent company in the High Court against the judgment of the Dt. Judge, Coimbatore.

p.51 cf

✓ p 35 cf (F)

2. Submitted that the Govt. Solicitor was instructed to file a petition in the High Court for winding up the company before the disposal of the appeal filed by the company with reference to the opinion given by the Advocate General at p.33.c.f. of (F).

p 33 cf (F)

3. The result of the appeal filed by the company may be awaited. Meanwhile, Legal may see.

BSR 4.11.49 4.11.49

Dev 4.11.49

Dev No. 73683 Dev/49-10 7.11.49

5/11/49 7.11.49

Legal

LEGAL DEPARTMENT.

Seen in Legal. The Govt.Solicitor has not stated whether the application for adjournment was contested on the grounds mentioned at p33cf(F). As the High Court has granted the application, the result of the appeal filed by the Company will have to be awaited.

109990 Dev/49 10.11.49 9/11/49

Dev

Dev. Sec.

Legal U.O.No. 14436/49-1 9-11-49

To A.S.

The notes of Legal above may be perused. This may lie over till 20-12-1949 or till a result of the appeal filed by the Company is receive

Cb/

Whichever is earlier

BSR 11.11.1949 / 11.11.49

SR 12/11/49

(From the Govt. Pleader, Madras No.1167 dated 14-11-1949) p 53 cf

To A.S.

Please see the letter from the Govt. Pleader on p.53 c.f. stating that the appeal filed by M/s Kollegal Silk Filatures Ltd., Kollegal against the judgment of the District Judge, Coimbatore was dismissed with costs by the High Court. A copy of the Govt. Pleader's letter may be communicated to the Govt. Solicitor and he may be asked to state when the petition filed by him for winding up the Kollegal Silk Filatures Ltd., will be taken up by the High Court. Subject to orders, a draft Memo is submitted below for approval. Legal may see before issue.

BSR 21.11.49 / 21.11.49.

SR 22/11/49 Legal

Thro' D.T. 22/11/49 One Volume

Legal Dept ~~Dev~~ 00.73683 Dū/49-11 22.11.49

Seen in Legal

D/ADS

A/ (The G.P may also be asked to send a copy of the H.C's judgment.) MP 23/11/49

ASSISTANT SECRETARY 15444 23 NOV 1949 LEGAL DEPARTMENT

Dev 114805 Dū/49 24.11.49

Legal Dte. O.No.15644/49 23-11-49.

Dev. Dept.

THIRD ASST. SECRETARY TO GOVERNMENT 24 NOV 1949 DEVELOPMENT DEPARTMENT

TO A.S.

The notes of Legal above may be perused. ✓ Draft I

The draft Memo. to the Govt. Solicitor may now issue.

With reference to A' above, a draft Memo to the Govt. Pleader is submitted below for approval. ✗ Draft II

The draft below may now issue.

BSR 25.11.49 / 25.11.49

SR 25/11/49

(Issued as Memo No.73683 Dū/49-12 dated 25-11-1949) p 55 ck

(Issued as Memo No.73683 Dū/49-13 dated 25-11-49) p 57 ck

6353

SPECIAL.

Development Secretary,

The Kollegal Silk Filatures Ltd., have intimated their intention of liquidating the concern themselves. The case, I understand, has been posted for hearing on the 30th January. Have instructions issued to the Crown Representative to accept the same? Please put up papers atonce.

H.M. Ind.

Dev. Dept.

To A.S.

The minutes of H.M. (Ind) above may be perused With reference to 'A' above, submitted that no such intimation has been received by Govt. It is not known whether the Govt. Solicitor or the D.I. & C. has received such an intimation from the company. They may be consulted. A draft T.M. is submitted below for approval. After issue, the file may be circulated to H.M.(Ind) with reference to his minutes above.

To A.S.

Please see the copy of the letter since received from the Govt. Solicitor on pp.69-70 c.f. The further report referred to as 'A' on pp.69-70 c.f. may be awaited. till 28-1-50. The file may be circulated to H.M.(Ind)

(From the D.I. & C. No.S.A.1352/47 dated 25-1-1950)

(From the Govt.Solicitor p.c. of T.M. dated 28-1-1950)

To A.S.

In his letter at pp 69-70 c.f., the Govt.Solicitor stated that when the petition filed by him in the High Court for winding up the Kollegal Silk Filatures Ltd., came up for hearing before the court on the 17th instant, the Advocate for the company represented to the Hon'ble Judge that the company had passed a resolution for its voluntary winding up, that the company had also filed an application for the permission of the Court to the company to go into voluntary liquidation and that the petition had been adjourned at his request to the 31st instant to enable him to obtain further instructions from Govt. He also stated that he was addressing the Advocate General in the matter and that he would forward the Advocate General's opinion as soon as it was received.

2. The Govt. Solicitor has now forwarded a copy of the Advocate General's opinion and it is at p.77 c.f. The Advocate General has expressed the opinion that, as it was stated in the reply affidavit filed by the D.I. & C. that the winding up should be subject to the supervision of the Court, that position ~~may~~ might be adhered to and for this purpose the application will have to be opposed.

3. Submitted that the winding up of a company may be either

(1) by the Court, or

(2) voluntary, or

(3) subject to the supervision of the Court.

Sections 162 to 247 of the Indian Companies Act, 1913, deal with these three forms of winding up of a registered company. The main difference between a voluntary winding up and a winding up subject to the supervision of the Court is that, in the former case, the appointment of one or more liquidators is done by the company and in the latter case, the appointment of liquidators is done by the Court having regard to the wishes of the creditors or constributors as proved to it by any sufficient evidence.

4. It is for orders whether the Govt. Solicitor may be informed that the Govt. agree with the opinion expressed by the Advocate General ~~for~~ that the winding up of the company should be subject to the supervision of the Court and that the application for the voluntary winding up of the company should be opposed.

Subject to orders, a draft Memo is submitted for approval. Legal and Finance may see before circulation.

28.1.50 / 28.1.50.

28-1-50 D.S. 28/1/50

Legal / Fin

Legal

ASSISTANT SECRETARY 1405 28 JAN 1950 4.40 PM LEGAL DEPARTMENT

Seen in Legal 28-1-50. Fin

Legal U.O. No. 1405/50-I 28-1-50. 5-10 P.M.

Finance (Exp A)

(Previously Seen in this dept at p 6 ante)

The draft memo may be perused and the case returned to Dept.

ADDITIONAL DEPUTY SECRETARY 1401 EA 30 JAN 1950 FINANCE DEPARTMENT

28.1.50. 28.1.50.

28/1/50

Fin U.O. No. 6401 Exp A/50-I 28-1-50.

Dept Dept.

The minutes of H.M (Snd) on p.9 above and the notes on pp 10-11 above may be perused. For orders whether the draft Memo. submitted below, which has been seen by Legal & Finance, may now issue.

28.1.50 28-1-50 30.1.50

H M (Snd) 31/1

L.T.3. [illegible] issued as Memo No. 73683 dated 31-1-50

12/

(From the Govt. Solicitor No.456, dated 31-1-1950). p.81 c/f

(From the Govt. Solicitor No.486, dated 2-2-1950). pp 83-84 c/f

To A.S.

The letter received from the Govt. Solicitor, Madras on pp 83-84 c.f. may be perused.

2. The High Court has rejected the application filed by the Kollegal Silk Filatures Ltd., for permission to go into voluntary liquidation and has passed orders directing the company to be wound up under the provisions of section 162 (vi) of the Indian Companies Act, as applied for by the Govt. The High Court has also appointed the Official Receiver as the Official Liquidator of the company and has instructed him to take possession of all the assets of the company. The Govt. Solicitor has communicated a copy of his letter on pp 83-84 c.f. to the D.I. & C. and the Sericultural Expert, Kollegal and has requested the Sericultural Expert to help the representative of the Official Receiver in obtaining possession of all the assets and records of the company.

'A' on p 83 c/f

(put up) × p.35 c/f (7)

'B' on p 83 c/f

'M' on p 84 c/f

3. No further action is necessary ~~at present~~ at present. The receipt of the certified copies of decree and judgment called for ~~frm~~ in Govt. Memo at p.70(a) c.f. and the copy of the High Court's order referred to at 'A' on p.84 c.f. may be awaited till 20-2-1950.

4. The file may be circulated to H.M. (Ind) for perusal of the Govt. Solicitor's letter on pp 83-84 c.f.

I understand that the agent of the company for getting its liquidation application was not accepted there. D.I

3.2.50

3.2.50

3/2/50

3/2/50.

Sr 3.2.50

3.2.50

(write up)

HM (Ind) 3/2

M 3.2.50

P.T.O

73683 DII/49

16/11/N

To A.S:

The copy of the affidavit filed in the High Court by M/s Kollegal Silk Filatures Ltd., on pp 87-91 Cf and the minutes of H.M (Ind) at 'A' on p. 87 Cf may be perused. As ordered by H.M (Ind), the stay order from the High Court may be awaited till 20-2-1950

It may be noted that the petitioners in Para 'A' on p 87 Cf talks about the informal assurance of Govt(Dis) as if it was an agreement reduced to writing. Both these people are known to me and I have had occasions to deal with some of these people's that they misuse our consideration and kindness. I feel that here they must not be given any more opportunity to discuss the matter. All that we have is that in case the petition such a petition we may not oppose. We do not claim it with that assurance as a ground for his petition

10.2.50 / 10.2.50

10.2.50 / 10.2.50

Asst. Secy. to the Govt. of India

Special.

Development Secy.

✓ p 93 Cf

Pl. see the letter below. If the stay order has been granted by the High Court, we may instruct the Crown Solicitor to agree to the conditions mentioned in the affidavit - copy sent to Govt. already. As the case has been posted for final hearing on the 14th February, action may be taken atonce.

× pp 81-11 Cf

H.M.Industries.

THIRD ASST. SECRETARY TO GOVERNMENT
11 FEB 1950
DEVELOPMENT DEPARTMENT

Submitted that a copy of the stay order has not been received by the Govt. However, in view of the urgency, it is for orders whether the Govt. Solicitor may be informed that, if a stay order

16

has been issued by the High Court, he may agree to the passing of an order by the High Court on the lines stated in para 9 of the affidavit. Subject to orders, a draft Memo. is submitted for approval. Nsc is no more to consult the DOC

p 91 c.f.

no need

11.2.50

SECRETARY TO GOVERNMENT 13 FEB 1950 DEVELOPMENT DEPARTMENT

11.2.50

Issued. p 95 c.f.

(Issued as Memo no. 73683 Dev/49+9 d/11-2-1950) p 95 c.f.

(From the Govt. Solicitor No. 699 d/ 14-2-1950) p 97 c.f.

A

To A.S.

The letter from the Government Solicitor on p.97 c.f. may be perused.

2. Submitted that the orders issued in this Dept.Memo at p.95 c.f. were in accordance with the request made by the Advocate for the company in his letter at p.93 c.f.

B on p.93 c.f.

3. In this connection, attention is invited to para 14 of the affidavit at p.91 c.f. It seems that the intention is that the company should be permitted to go into voluntary liquidation with a Liquidator who will be subject to the supervision of the High Court. For orders whether the Govt. Solicitor may be informed that he may agree to the order for compulsory winding up being set aside and the company being permitted to go into voluntary liquidation with a Liquidator who will be subject to the supervision of the High Court. Subject to orders, a draft Memo is submitted for approval. Legal may see before circulation.

A on p.97 c.f. No. HM's comment was to the Company's now He did not agree to convert to compulsory winding up to voluntary liquidation.

17.2.50

17.2.50

20.2.50

Legal

ASSISTANT SECRETARY 21 FEB 1950 LEGAL DEPARTMENT

2718 dev VO. 73683 20.2.50

LEGAL DEPARTMENT.

The powers of a liquidator under a compulsory winding up are more closely under the supervision of the Court than in the case of a liquidator under a voluntary winding up subject to the supervision of the Court (see ~~s~~ ss 179 and ~~225~~ 225 of the Companies Act). In the case of the former, he has to obtain the Court's sanction for every item of detail set out in s179, whereas in the case of the latter, he is free to do these things without the Court's sanction, unless restrictions are imposed by the Court (s~~225(1)~~ 225 (1)). If it is considered necessary that the company's nominee who is appointed as the official liquidator should work under the strictest control of the Court, the Govt. need not agree to any modification of the order for compulsory winding up already passed by the High Court. ~~Except in respect of~~ So far as it relates to the person ~~to be~~ appointed as the Official Liquidator

Dev. Dept.

To A.S.

The Govt. Solicitor has asked for clarification

(1) whether the Govt. ~~should~~ agree to the Kollegal Silk Filatures Ltd., to go into voluntary liquidation with a Liquidator subject to the supervision of the Court, or

(2) whether Govt. agree only to the appointment of the Company's nominee as Liquidator in the compulsory winding up previously ordered by the Court.

In the Affidavit filed by the Kollegal Silk Filature Ltd., (petitioner) it has been stated that H.H.(Ind) had no objection to the voluntary liquidation of the company subject to the supervision of the Court. Secretary has, however, observed that H.H.'s consent was only to the Company's

P.T.O

nominee and that he did not agree to convert the corpulsory winding up to voluntary liquidation. Legal Department, while pointing out the difference in the powers of a Liquidator in a compulsory winding up and a voluntary winding up, has observed that, if it is considered necessary that the company's nominee who is appointed as Official Liquidator should work under the strictest control of the Court, the Govt. need not agree to any modification of the order already obtained for compulsory winding up except in so far as it relates to the person appointed as Official Liquidator

In the circumstances, it is for orders:

(1) whether the Govt. will agree to the voluntary liquidation of the company subject to the supervision of the Court as stated to have been agreed to by H.Ho(Ind) in the affidavit, or

(2) whether the Govt. will agree only to the appointment of the company's nominee as Liquidator in the compulsory winding up already ordered by the High Court as observed by Secretary at p.14 above.

To A.S.

With reference to the orders in circulation above, a draft Memo to the Govt. Solicitor is submitted below for approval. Issue at once

(Issued as Memo No. 73683 Ad/49-21 d/23-1950)

7:2

Pr 101-102 cf from the Govt. Solicitor No: 1018 dated 6/7 and 3-50.

A.S.

16/1/50

The communication from the Govt. Solicitor at Pr 101-102 cf is submitted for perusal with reference to the Govt. memo at P 99 cf

Dis. 17/3/50.

Sr 13350 / 14.3.50

HM (20) 16/3

(from the Govt. Solicitor No. 1210 d/ 13-3-1950)

Pp 103-104 cf

TO A.S.

The further communication from the Govt. Solicitor at pp 103-104 cf is submitted for perusal.

2. The copy of the order referred to at 'A' on p. 104 cf may be awaited.

Legal may see before circulation

DSR 17.3.50.

Dis. 17/3/50.

Sr 18350 / 18.3.50

dw U073683 DII/49-22 / 18.3.50.

Legal

Legal Dept

M 2nd 107 DII/50 25.3.50 Seen in Legal. The copy of the Hon'ble Court's order may be awaited.

23/3/50

DC

Dew. Dept.

Legal No: 4290/50-1 23/3/50.

TO A.S.

The file may now be circulated to H.M (Judl)

3/29/3

for perusal of the letter from the Govt Solicitor on pp 103-104 ct

ASR 27.3.50 Hi 27/3/50.

Sr 27/3/50 S/ 28.3.50

Hm (20) 29/3

SECRETARY TO GOVERNMENT 30 MAR 1949 DEVELOPMENT DEPARTMENT

(From the Govt. Pleader No. 490 dated 11-4-1950) p. 105 ct.

To A.S

With reference to the notes of Legal Dept at 'A' on p. 8 above, the Govt. Pleader, Madras was asked to send copies of the High Court's judgment in appeal No. 567/46 and C.R.A. No 544 & 17 7 The Govt. pleader has forwarded certified copies the judgments and they are at (H) The file be sent to Legal with reference to their remarks at 'A' on p. 8 above.

p. 57 ct

p 104 ct

ASR 15.4.50 Hi 17/4/50.

Sr 17/4/50 Legal

Dev. 00-73683 Dev/Leg-23 17.4.50.

Legal Dpl

S-867 ASSISTANT SECRETARY 17 APR 1950 LEGAL D

D/ DS

Legal 00-8867 20-4-50

3516 Legal/50 21 APL 1950 ASSISTANT SECRETARY

2.145 P.T.O.

-736r-DII/49.

Dev. Dept.

To A.S.

The notes of Legal on p. 18 above may be perused. The copy of the order referred to at 'A' on p. 104 ct may be awaited

30-4-1950

28.4.50 S 28/4/50

~~Issued with reference to p. 87/ante~~

~~From the Govt. Solicitor, M. dated 22-4-50 R.~~

Issued as Memo No. 73683 DII-49-25 d 15.5.50

From the Govt. solicitor, M. 4443 d 25.5.50

Issued as Memo No. 73683 DII-49-26 d 29.5.50

From the State Counsel d.r. D.S.K.S. 1281/50 d 21.9.50

The State Council's letter at p 117 c.f. may be perused.

The D.I.&C. may be asked to submit the certified copies of the orders to the Govt.

A draft memo is submitted below for consideration

27/9/50 S 28/9/50

Issued as Memo No. 73683 DII-49-27 d 28.9.50

From the D.I.&C., No. S.A-1352-41 d 9.10.50

The D.I.&C. has now furnished the certified copies of the High Court orders. They are at ©

The case may be sent to Legal with reference to their remark at A on p 8 above & M on p 17 above

17/10/50 27/10/50 S 27.10.1950 Legal

O/DS

ASSISTANT SECRETARY 16830 25 OCT 1950 LEGAL DEPARTMENT

Dev. (W) No. 73683 DII-49-28

24.10.50

20 —

Legal Dept

Seen in Legal
Dept
5/11/50 Dev

Legal No.
16830/50-1
5-11-50

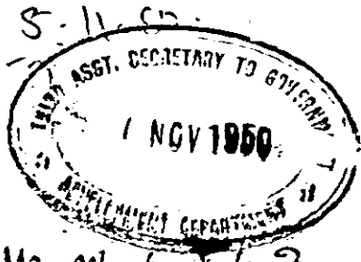
112221
Dev. Dept.

To A.S.

No further action is called for in this case. The papers may be recorded

SD
14/11/50 Dy 14/11/50

SD
17/11/50



G.O. Ms. No. 4643
17-11-50

Industries - State Aid to Industries - One Kollegal Silk Filatures Ltd. - Winding up under section 162 of the Indian Companies Act - Ordered by the High Court - Papers recorded

SD
14/11/50

Dev.Dept.DII

Memo No.55574 DII/51- dated

Sub:-State Aid to Industries - The Kollegal Silk Filatures Ltd., Kollegal - Government share amount of Rs.17,850/-- Recovery of.

Ref:-From the D.I. & C. No. SA.6656/50 d/16-5-51.

In his letter cited, the D.I. & C. has reported that the Liquidator for the Kollegal Silk Filatures Ltd., Kollegal has deposited a sum of Rs.17,850/- in the Reserve Bank of India, Madras on 1-11-1950 towards the shares held by the Government as "undisbursed and unclaimed" balance amount. He has therefore requested the Govt. for permission to apply to the High Court of Madras for an order directing the refund of the share amount to the Govt. and to incur the expenditure therefor.

2. The High Court have ordered the winding up of the company as early as March 1950 - Vide the ex-Govt. Solicitor's letter No.1211 dated 13-3-1950, and it is considered that steps should have been taken

p.t.o.

22

immediately to get the value of the shares held by the Government in the Kollegal Silk Filatures Ltd. It is not clear why the amount has been allowed to be deposited in the Reserve Bank of India as "unclaimed" balance. ~~This has resulted in extra expenditure to the Govt. for getting the amount by moving the High Court.~~ The D.I. & C. is requested ~~to examine the case and~~ to report why timely action was not taken for claming the amount and who is responsible for the omission.

To the D.I. & C.

R.D. 11-6-1951.

ASSISTANT SECY 8783 26MAY1951 LEGAL DEPARTMENT

Legal Department.

Seen in Legal.

2/6/57

2/6/57

Fin dept

Fin (EA)

Leg who 8783/EH
2.6.57.

It seems that in spending the right proposed to be called for in para 2 of the Dept memo., the DH may be authorised to get the amount credited to the Govt. Necessary amendment may be made in the draft memo.

The draft memo. supplementing the above may be perused

9.6.57

9.6.57

8.6.57

9.6.57

9.6.57

9.6.57

ADS

The D.H.C. may be asked to take immediate action to have the amount credited to the Govt. (It is presumed that the deposit in the Reserve Bank is outside Govt. account.)

The explanation for the delay in taking action may also be called for as proposed

Fin's 42221 EA/57

9.6.57

65150

9.6.57 Draft

21

55574 D II 51

Dev. Dept. D.II

To A.S.

The notes of Legal and Finance on p. 3 above may be perused. The suggestion of Finance at 'A' on p. 3 above may be accepted subject to orders, a revised draft memo is submitted below for approval.

12-6-51 — 13/6/51 — 13/6/51 — S — 13/6

(Issued as Memo No 55574 D.II /51-1 dt 13-6-51) .. pp 5-6 ct ..

(From the Dy S.C. No. 665-6/50 dt 29-6-1951) .. pp 7-8 ct ..

To A.S.

The memo to the Dy S.C. on pp 5-6 ct and his reply on pp 7-8 ct may be perused

2. In his letter at pp 7-8 ct, the

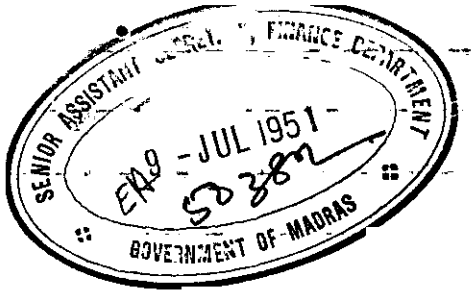
P.T.O.

55574/51

CA

D.I.S.C. has explained in detail how the value of the shares ~~amount~~ held by this Govt in M/s The Kollegal Silk Filatures Ltd., Kollegal could not be realised before the amount was deposited in the Reserve Bank of India. In the circumstance explained by him, no further action seems called for in this file. For orders

3. Finance may see



4/7/51

4/7/51

4/7/51

S 7/7

Fin (EA)

Dw U.O. 55574 Dn/51-3

7.7.51

Fin Sec

Fin (EA)

Fin w 5038/EA/51-1, 10th

13/7

(Previous fin notes onp 3 above)

77911 The further notes of Dept mppl 4 to

Dept 16.7.51 above may be perused. R 13/7/51 AS.I 13/7/51 Dept

26

55574 D.II /51

Dev. Dept. DII

To A.S.:

The notes of Finance at the bottom of p.5 above may be perused No. further action is called for in this file The papers may be lodged and added to the G.O. at (W)

DSN 16.7.51

17/7/51

17/7/51

alone this

long

MANAGER

BENCH CLERK

Certified to be a true copy

This the day of 19

Certified to be a true copy
Dated this 8th day of August 1950

MANAGER

, O. S.

BENCH CLERK

Petn
Applied - 21/2/50
Stamps called for - 23/2
" Put in - 24/2
Ready 9/8/50
B.C.O.S

Clerk

Electrical Section
High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Monday the thirteenth day of March,
One thousand nine hundred and fifty

Present:-
The Honourable Mr. Justice Horwill
and
The Honourable Mr. Justice Balakrishna Ayyar.

O. S. Appeal No. 6 of 1950.

The Kollegal Silk Filatures Ltd. ... Appellant (Respondent.

The State of Madras ... Respondent (Petitioner

Appeal against the order and judgment of the Honourable Mr. Justice Mack dated 1st February 1950 and passed in O.P. No.6 of 1949 on the file of the High Court on its Ordinary Original Civil Jurisdiction

O. P. No. 6 of 1949

Between:

The State of Madras ... Petitioner

And

The Kollegal Silk Filatures Ltd. ... Respondent.

This Appeal coming on for orders in the presence of Sri K.S. Sankara Iyer, Advocate for the Appellant and of Sri D. Narasaraju for the Advocate General instructed by the Government Solicitor on behalf of the Respondent, the Court made the following

O r d e r:-

The winding up of this company has been necessitated by the requisitioning and acquisition of the Company's machinery by the Government and their refusal to sell it back to the Company.

Mr. Narasa Raju for the Government is unable to give any reason why the Company should not be wound up voluntarily. The learned Judge seems to have been in error in thinking that the winding up could not be voluntary, because some action of the Government made that course impossible. The Government is in the position of an ordinary share-holder and has no higher claim to the consideration of the Court. The Company

at a regularly held meeting, resolved that the Company be wound up voluntarily. In the absence of a reason for interfering with the esolution of the company, it should be given effect to

As a concession to Government, the company is willing to have the voluntary winding up subject to the supervision of the court. It is ordered accordingly.

The company may meet its costs out of the assets of the company.

The sum of Rs.1,78,000/- (Rupees One lakh seventy eight thousand only) deposited by the appellant into Court will be made available to the liquidator. The Government will meet its own costs in both courts.

and the Registrar High Court Madras do pay the said sum of Rs.1,78,000/- Rupees one lakh seventy eight thousand only to the liquidator.

(Signed) R. Jayaram Ayyar,
13-3-50
Deputy Registrar, Appellate Side.

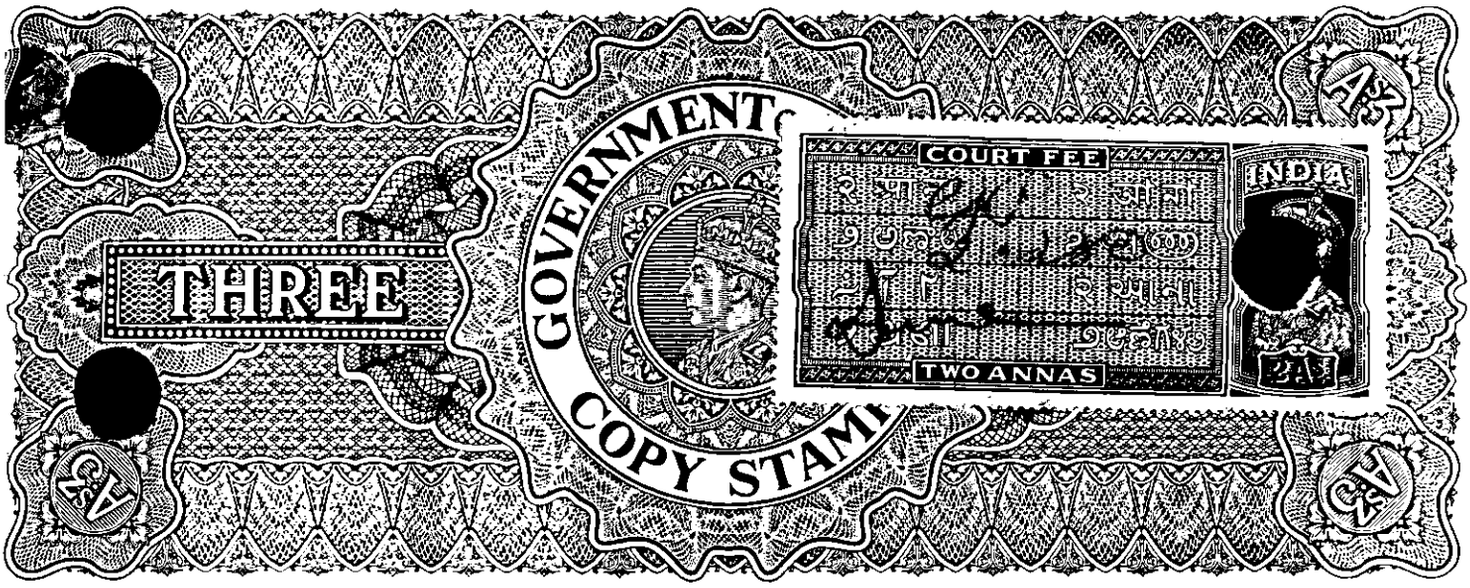
Certified to be a true copy,
Dated this 28th day of March 1950

Manager, O.S.
B.C.

BCR

Admitted 17/3/50
Court called for - 21/3
" Not ready - 27/3
Ready - 29/7/50
B.C. O.S.

O.S.A.No.6 of 1950
O.P.No.6 of 1949
Order dated 13-3-1950.



IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Friday, the Fourteenth day of November,
~~One thousand nine hundred and forty nine.~~

Present:- THE HONOURABLE Mr. JUSTICE SUBBA RAO.

And THE HONOURABLE MR. JUSTICE SOMASUNDARAM.

APPEAL AGAINST ORDER No.334 of 1947.

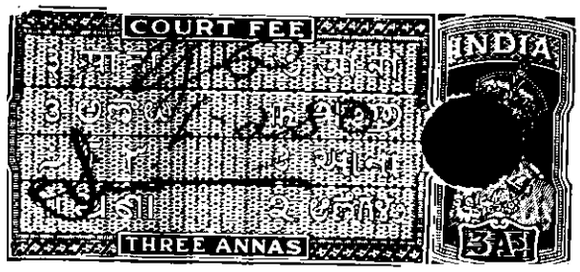
The Kollegal Silk Filatures Ltd Kollegal... Appellant (Claimant)

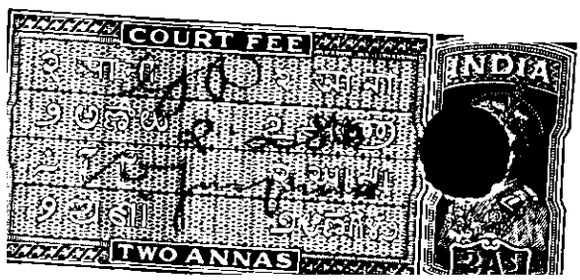
The Province of Madras by the Director of Industries & Commerce. Respondent(Respt.)

Appeal against the order of the District Judge-Abbitrator, Coimbatore dated the 22nd September 1945 in O.P.No.17 of 1944.

ORDER:-This Appeal coming on for hearing on Tuesday Thursday, and Friday the 1st, 3rd and 4th November 1949, and having stood over for consideration till this day the Court delivered the following:- JUDGMENT

This is an appeal against the award of the Abbitrator fixing compensation for the properties acquired by the Government. We have held in the connected appeal that the Government acquired the business of the appellants as a going concern. The learned Arbitrator fixed compensation on the basis that what were acquired were only moveable and immoveable properties.





The parties agreed that in the view expressed by us in the connected appeal the basis adopted by the Arbitrator is no correct. We therefore set-aside the award of the Arbitrator and we direct him to fix compensation on the basis that what was acquired was the business of the appellants as a going concern. We accordingly remand the matter to the Arbitrator for fresh disposal. Costs of this appeal will be provided for in the award.

Sd/V.Krishnaswamy, 25-12-49.
Asst.Registrar. A.S. & V.O.

99-G.Gopalan.274)
2nd & last stamp)

(True copy)

M.V. Krishnamurthi 8-4-1950
Supdt. of copyists.

JUDICATURE
MADRAS.

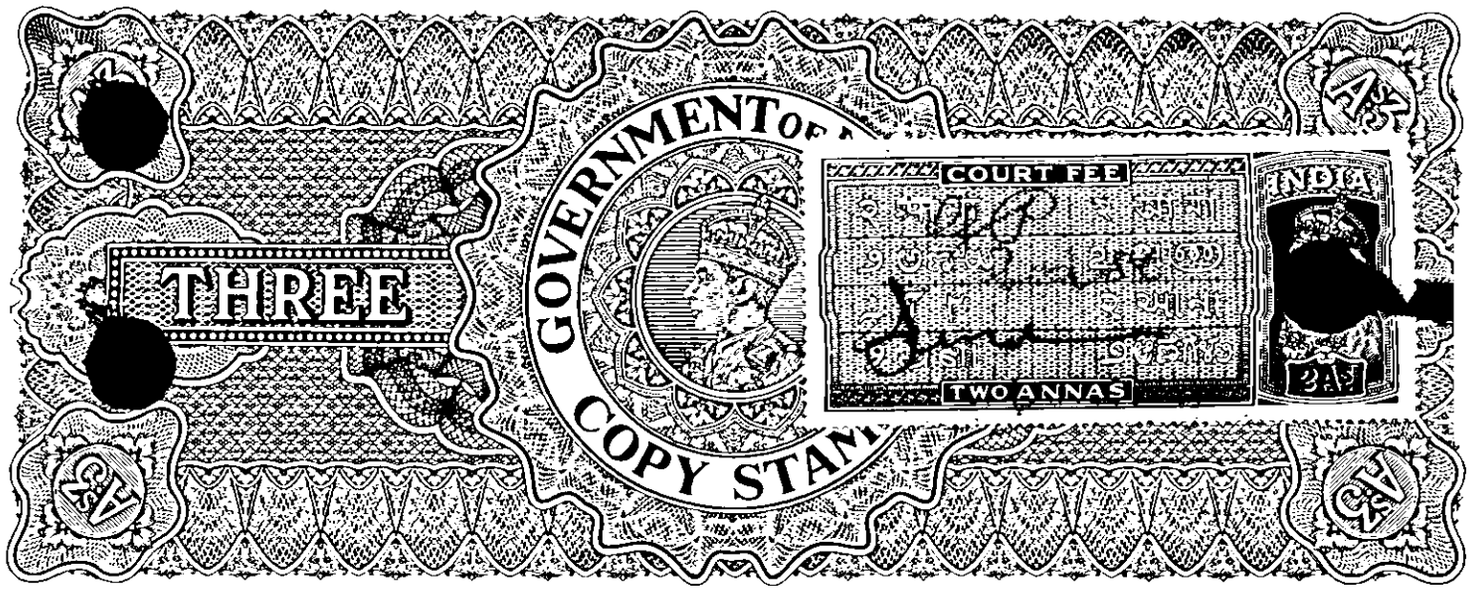
C.D. No. 8328 of 1949.

JUDGMENT

A.A.O.No.334 of 1947.

Application made on	14-11	1949.
Do. notified on	/	194 .
Do. ready on	/	194 .
Stamps called for	25-1	194 .
Do. delivered	2-2	194 .
Addl. Stamps called for	27-3	194 .
Do. delivered	31-3	194 .
Copy made	8-4	194 .
Fair copy delivered	10-4	194 .

Superintendent



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Monday, the fourteenth day of November,
One thousand nine hundred and forty nine.

Present:- THE HONOURABLE MR.JUSTICE SUBBA RAO

And THE HONOURABLE MR.JUSTICE SOMASUNDARAM.

APPEAL NO.567 of 1946.

The Kollegal Silk Filatures
Ltd.Kollegal.. ...Appellant (Plaintiff)

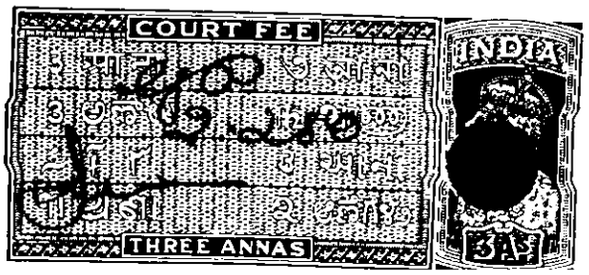
The Province of Madras represented
by the Secretary to Government
Development Department. ...Respondent(Defendant)

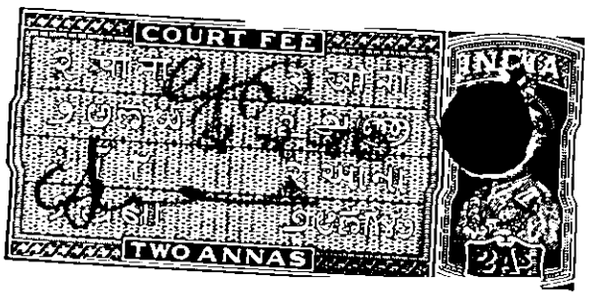
Appeal against the decree of the District Court of Coimbatore in O.S.No.2 of 1945.

This Appeal coming on for hearing on Tuesday, Thursday and Firday the 1st, 3rd and 4th days of November 1949 and having stood over for consideration till this day the Court delivered the following: J U D G M E N T

This appeal raises questions in regard to the power and its limitations of the Government of the Province of Madras to requisition and acquire properties under the Defence of India Act and the rules framed thereunder. The plaintiff is a limited company formed for carrying on business in silk filatures under the name and style of Kollegal Silk Filatures Limited, - - - -

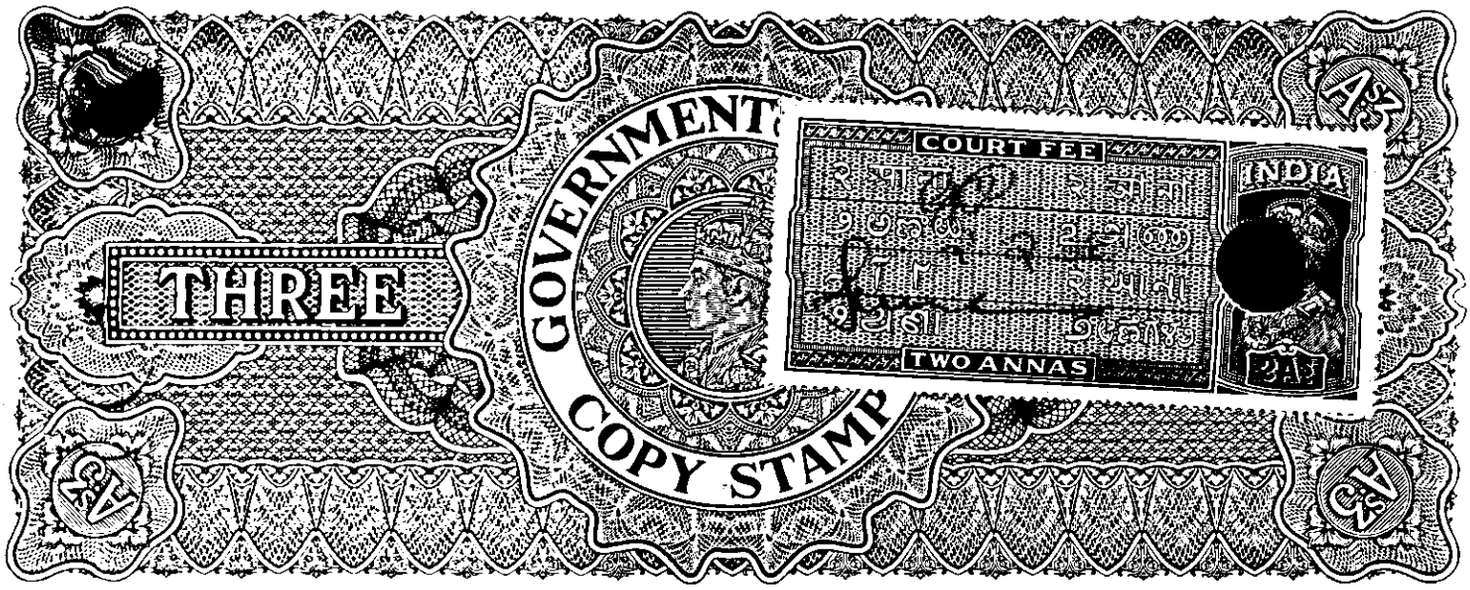
fol



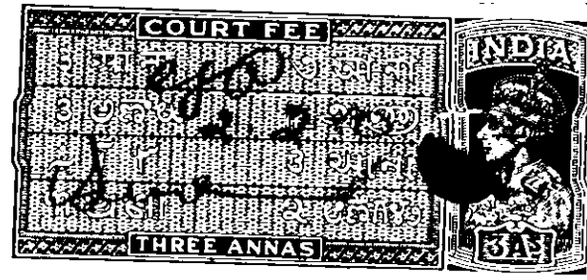


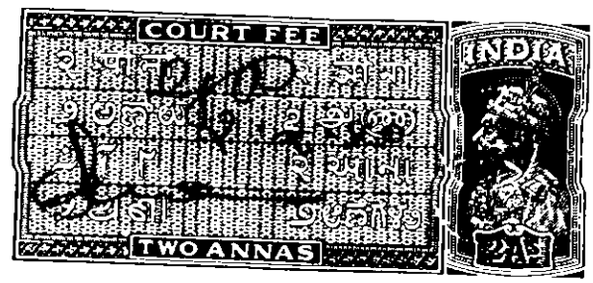
Kollegal. It was manufacturing and selling its products since 29-11-1937 The Government of Madras had also taken shares in the company and had a representative of theirs on the Board of Directors of the company. On the outbreak of the war silk was required for the manufacture of prachute fabric and the plaintiff was supplying to the Government on the indents placed with it. As the plaintiff company was not able to meet with the demands of the war the Government by an order dated 12-3-1943 requisitioned the lands, the factory and all the movables in the factory including the stock under section 75-A of the Defence of India Rules. Pursuant to the said requisition the Government took possession of all the immovable and movable properties of the company on 16-3-1943. On 30-3-1943 the Government of Madras served a notice on the plaintiff under Rule 75-A(2) informing them that the Government had decided to acquire the said properties. As the plaintiff did not accept - - - -

175-G.G.2.



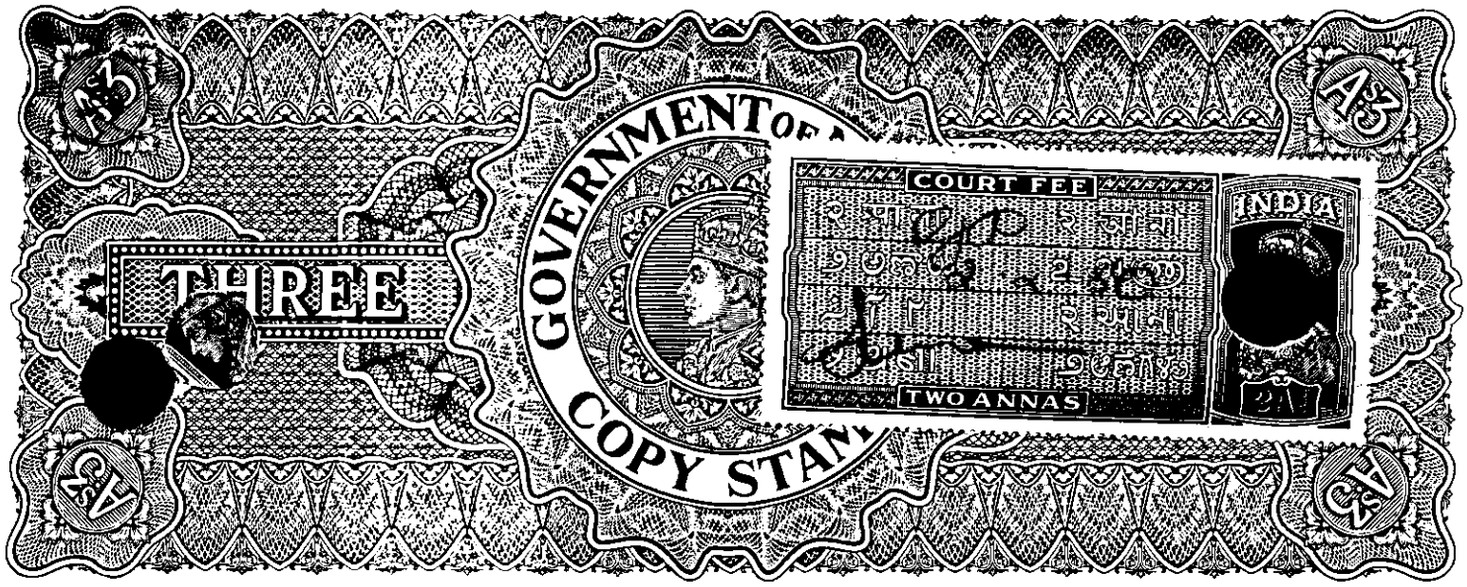
the compensation offered by the Government they appointed the District Judge of Coimbatore as an arbitrator for the determination of the compensation payable for the properties acquired. The plaintiff filed O.S.No.285 of 1944 on the file of the Court of the Subordinate Judge of Coimbatore (O.S.No.2 of 1945, District Court, Coimbatore) for a declaration that the requisition and the acquisition of the undertaking of the plaintiff company was beyond the power of the Government and illegal, for a direction to hand over possession of the undertaking and the properties to them and for recovery of damages till the delivery of the said property. The defendant inter alia contended that the Government had power to requisition and acquire the movable and immovable properties belonging to the plaintiff under Rule 75-A of the Defence of India Rules, that the suit was not maintainable in view of section 16 of the Defence of India Act and the only right of the plaintiff was to receive compensation awarded by the arbitrator appointed by the Government. - - - -





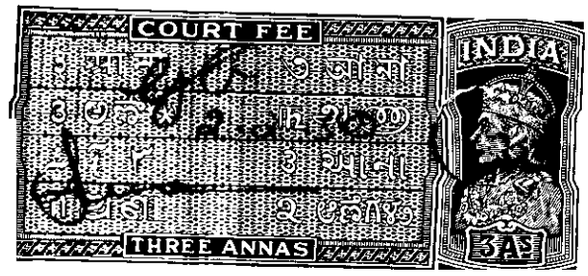
The learned District Judge of Coimbatore held that what was requisitioned and acquired was only the movables and immovables of the company and that the Government had power to do so under Rule 75-A of the Defence of India Rules. Though in the view he had taken the plaintiff could only get compensation in the manner provided by the Defence of India Act he expressed his view in regard to the appropriate compensation be awarded. In the result he dismissed the suit. The plaintiff preferred the above appeal.

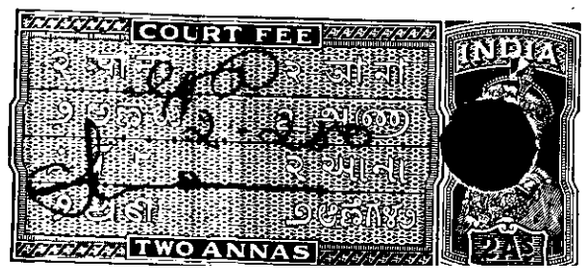
The learned counsel for the appellant raised the following points before us; (1) that though the Government purported to requisition and acquire specific items of immovable and movable properties, they in effect and substance, requisitioned the factory as a going concern which is an industrial undertaking; (2) that the Government of Madras has no power to requisition an undertaking or movable or immovable properties as such power of requisition is not an entry in the three lists of Schedule VII of the Government of India



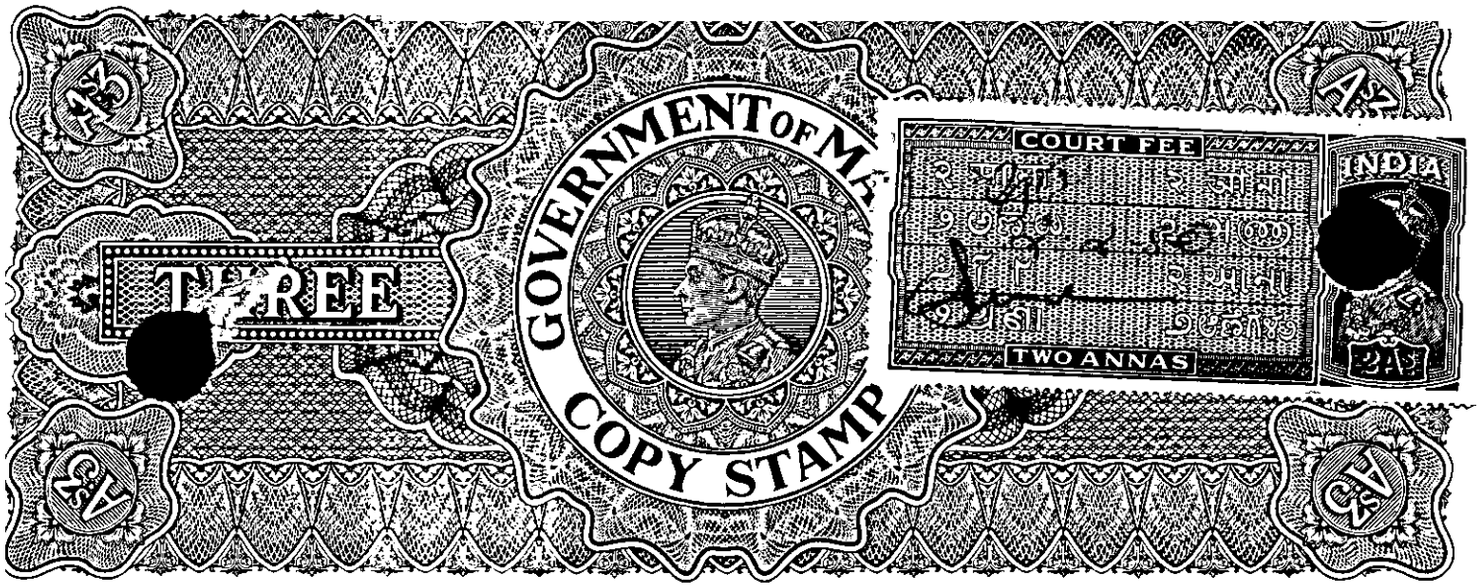
Act and that the Governor General of India did not issue a notification under section 104 of the Government of India Act authorising the Federal Legislature to enact a law with respect to any matter not enumerated in any of the Lists in VII schedule; (3) that the Government of Madras has no power to requisition or acquire an industrial undertaking as Rule 75-A of the Defence of India Rules only empowers the Government to requisition and acquire movable and immovable properties and their power in regard to the industrial undertakings is confined to the regulation only under Rule 81 of the Defence of India Rules; (4) that the order of acquisition was invalid as it was not expressed to have been taken in the name of the Governor; and (5) that under section 15 of the Defence of India Act of 1939 the Government is enjoined to interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest - - -

175-G.G.5.





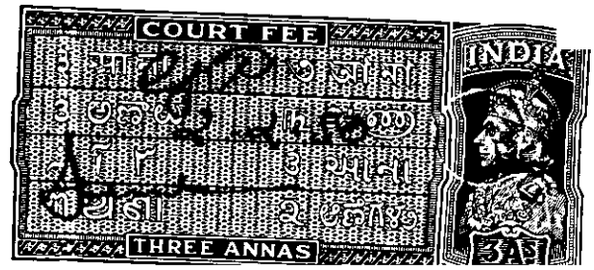
and the defence of British India and therefore the acquisition of the factory would be illegal as in no conceivable circumstances would such acquisition of property be consonant with such purpose. The learned Advocate General appearing for the Province of Madras contended that what was requisitioned and acquired by the Government was only the movable and immovable properties of the company which the Government had power to do under the Defence of India Rules, and that whether it was an undertaking or whether it was movable or immovable properties that were acquired, in the former case (the subject) was covered by entries 27 and 29 of List II and entry 26 of List III and in the latter case is comprised in entries 9 and 21 of List II of the Government of India Act, that in view of 9 and 10 George VI, chapter 23 amending section 102(1) of the Government of India Act the Central Legislature was empowered to make laws with respect to any matter not enumerated in any of

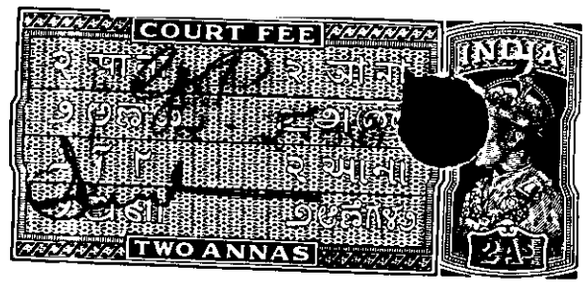


the Lists in the VII schedule to the Act, that the Government of Madras had ample power to requisition and acquire an industrial undertaking under Rule 75-A of the Defence of India Rules and that section 15 of the Defence of India Act is only directory and the civil court has no jurisdiction to question the discretion of the Government under that section.

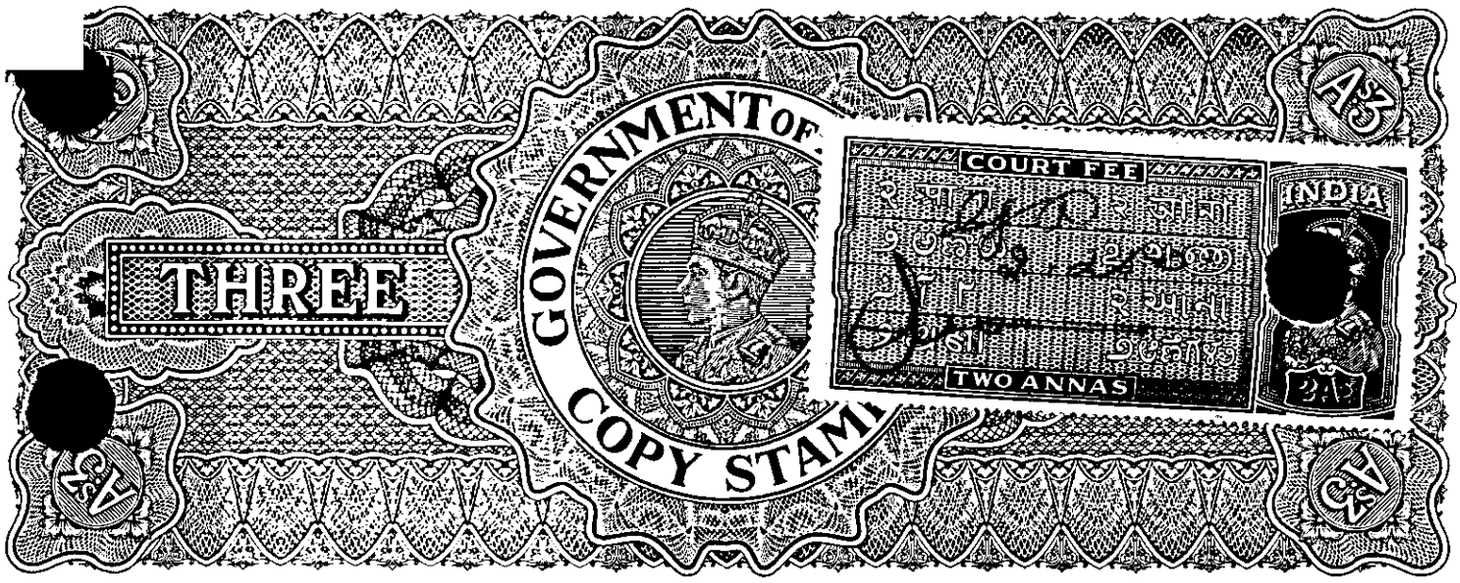
The first question therefore that arises for consideration is as regards the scope of the requisition and acquisition of the suit factory. Did the Government acquire only the movables and immovables of the factory or did the Government, in effect and substance, requisition the entire business as a going concern. As we have already stated the company was supplying silk to the Government on the indents placed with it. Owing to various circumstances they were not able to meet the demands of the Government. There was correspondence between the Government and the company in regard to the supply of the required silk. Ex.D-4 is a letter dated 20-11-1942 - - - -

175-G.G.7

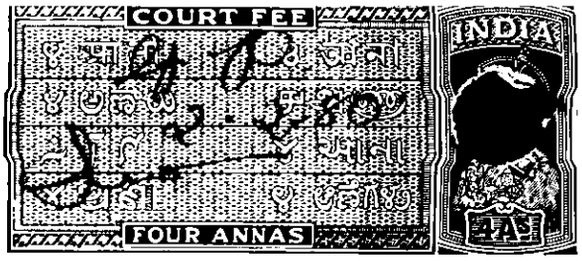


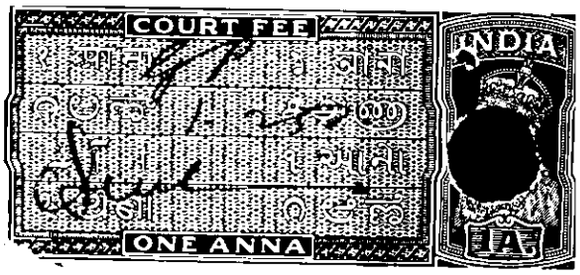


written by the company to the Director General of Supply, Textiles Directorate, New Delhi, wherein it was pointed out that unless there was enhancement of price the company may not be able to supply silk. Ex.P-11 is the report sent by the Sericultural Expert to the Director of Indistries and Commerce, Madras. It was suggested in that report that the control of the Kollegal Silk Filatures Ltd. with all its property and assets and capital and liabilities should be taken over by the Government in the interests of the defence of India. It also gives detailed suggestions for the improvement of the silk Filatures Ltd., for the training of the staff and other steps to be taken by the Government after taking over the company. It also gives an estimate of the expenditure to be incurred by the Government. Ex.P-12 is a copy of the G.O.Ms.No.136 Development dated 11th February 1943 sent to the plaintiff company. Under the said order the Government approved the scheme of preliminary - - - - - -



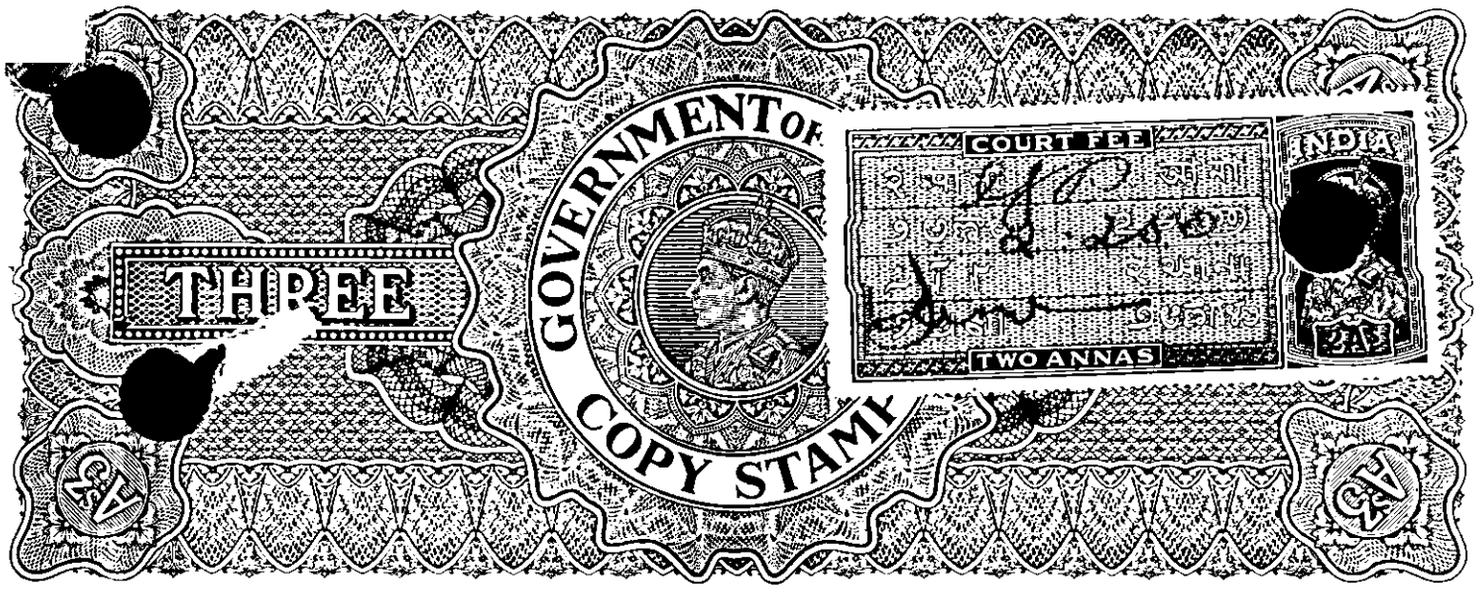
training for the subordinate suprevisory and labour staff proposed to be employed in the Government Silk Filatures Factory at Kollegal drawn up by the Sericultural Expert. The order provides compensation to the company for the loss sustained on account of the training of the staff in the factory and also sanctions amounts for payments of stipends for supervisory staff. On 14th January 1943, a Fule Bench of the Lahore High Court held in The Lahore Electric Supply Company Limited-v-The Province of Punjab I.L.R.24 Lahore 617 that under Rule 75-A of the Defence of India Rules only movable and immovable properties could be requisitioned or acquired and that rule was not applicable at all to the requisition or acquisition of an undertaking or a going concern. Presumably in view of that decision the Government of Madras issued a notice on the company, Ex.P-13, informing it that His Excellency the Governor of Madras was pleased to requisition with effect from the date of the service of the order immovable and - - - -





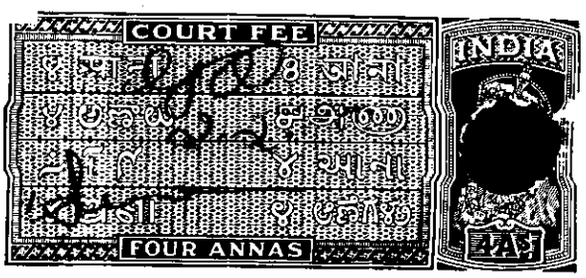
movable properties specified in the schedule and belonging to that company annexed to that notice. In the schedule annexed to the notice all the immovable properties of the company, the entire furniture, carts, cycles, bulls, machinery and the stock of raw material are mentioned as the properties requisitioned. Ex.P-16 is the exhaustive list of the movables and immovables belonging to the Kollegal Silk Filature Ltd., Kollegal taken over by the Government. It proves beyond doubt that the Government had taken over the entire factory with all its contents. Ex.P-15 dated 15th March 1943 is a receipt passed by the Managing Director of the company to the Sericultural Expert acknowledging the receipt of the order dated 12th March 1943 issued by the Government of Madras, Development Department under the Defence of India Rules requisitioning the Kollegal Silk Filatures Ltd., Kollegal, under the Defence of India Rules. P.W.1, the Sericultura' Expert to the Government of Madras says in his evidence

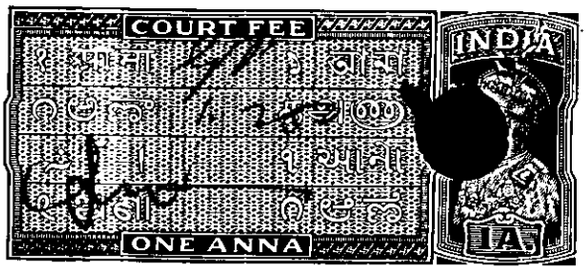
"In March 1943 the Government asked me to take possession of the company's - -



properties. Ex.P-16 is the receipt given by me for the properties with the inventory which I prepared. The conditions of the machinery is noted in the inventory. I took stock of the fuel and cocoons. I took over everything in the premises. I did not work the factory after taking charge. I handed over charge to another expert."

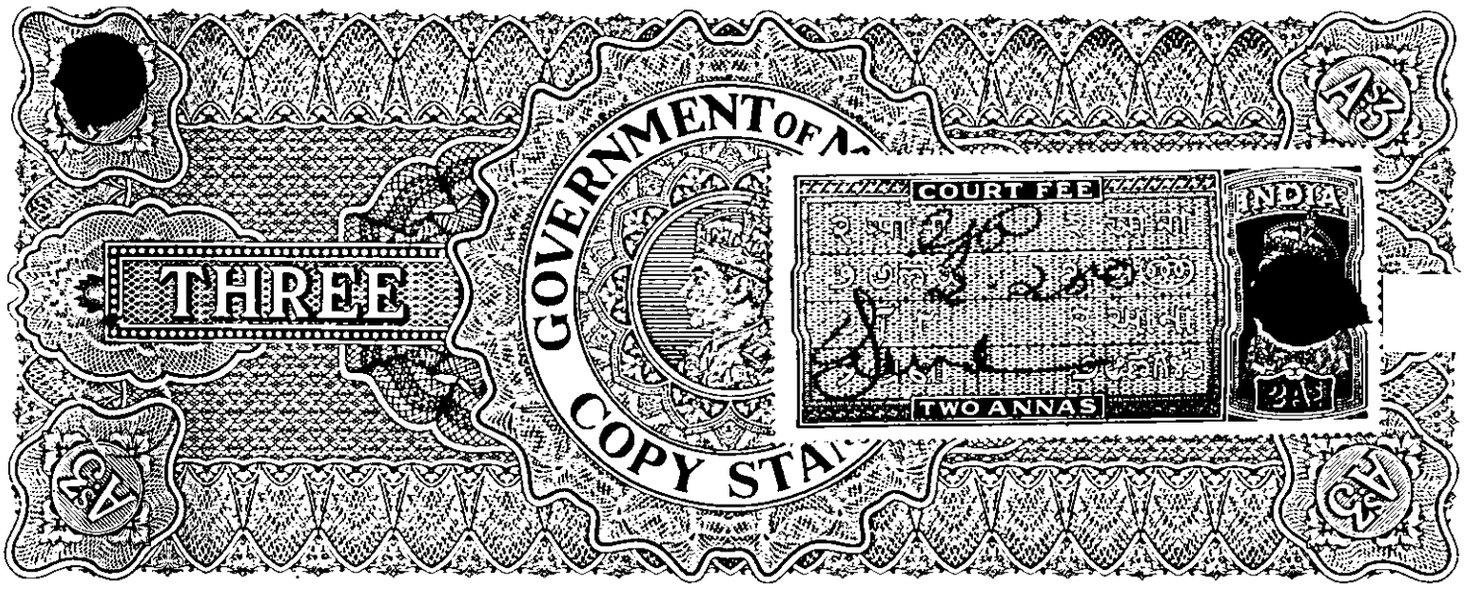
P.W.2, one of the directors of the plaintiff company deposes that he handed over charge to P.W.1 after the order of requisition was received and that when he handed over charge the factory was working and that P.W.1 took over the property, the cocoons, the labour, the staff and fuel. He further says that though for one or two days after he handed over charge there was not much work the factory worked properly thereafter. D.W.1 is the General Manager of the Government Silk Failatures company at Kollegal. He says in his evidence that he was asked to look after the technical side of the plaintiff factory from 16-3-1943, - - -





that on 16-3-1943 the trained labour available was sufficient only for working about 70 basins and that he was able to work the factory to full capacity by the middle of September 1943. Before the arbitrator he admitted that he took charge of the plaintiff company on 16-3-1943. He also says that the factory worked in March after 16th March. The aforesaid evidence, both documentary and oral, shows that the Government took over the factory with all its movables and immovables on 15-3-1943 and continued to work the factory with the then available cocoons and staff from 16th March 1943 itself though they later on increased the staff and improved the plant.

It is manifest that the Government took over the business as a going concern though the order of requisition was framed to avoid legal difficulties presumably in view of the Full Bench decision in The Lahore Electric Supply Company Limited-v-The Province of Punjab I.L.R.24 Lahore 617. The Government of - -

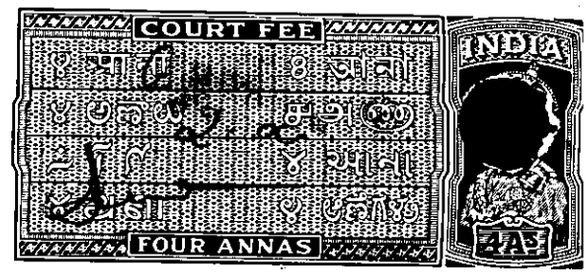


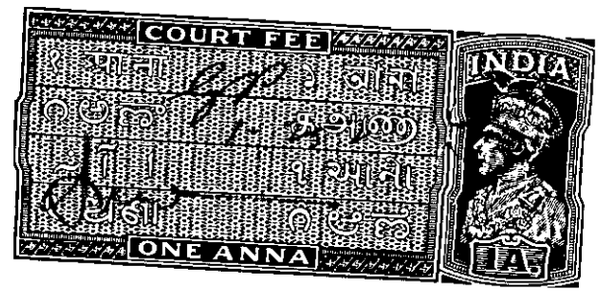
Madras issued an order, Ex.D-1, dated 30-3-1943, acquiring the said properties under Rule 75-A(2) of the Defence of India Rules. We therefore hold on the evidence that what was requisitioned and acquired by the Government was the business as a going concern with all its properties and stock in trade.

The question therefore to be considered is whether the Federal Legislature had the power to make laws for the requisition of the properties and the business of the company. The learned counsel for the appellant contended that such power was not conferred by the Government of India Act on the Federal Legislature. The relevant sections of the Government of India Act read follows:

Section 99(1). Subject to the provisions of this Act, the Federal Legislature may make laws (including laws having extra territorial operation) for the whole or any part of British India or for any Federated state and a Provincial Legislature may make laws for the Province or for any part thereof.

Section 100(1):- Notwithstanding anything in the two - - -





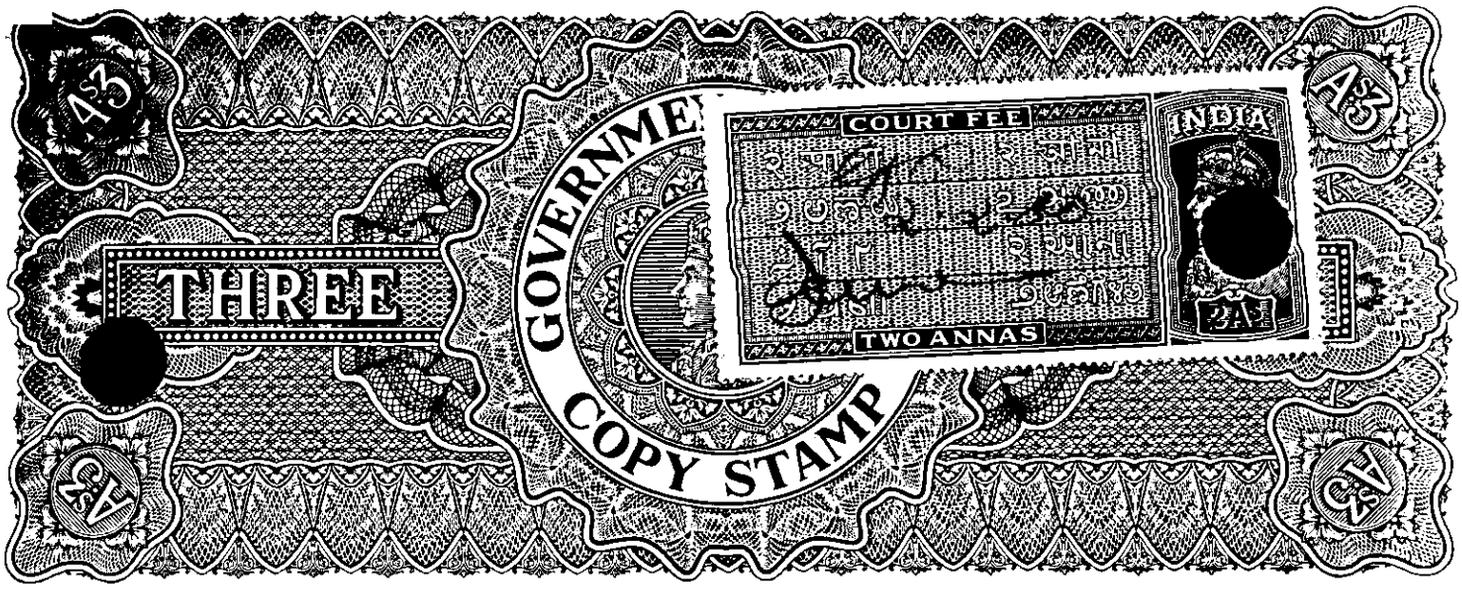
next succeeding sub-sections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with pespect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List")

2) Notwithstanding anything in the next succeeding sub-section, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said schedule (hereinafter called the "concurrent Legislative List")

3) Subject to the two preceding sub-sections the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List")

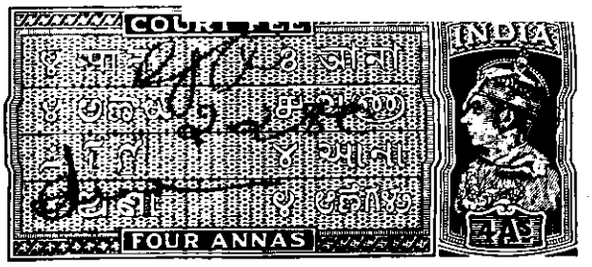
4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof;

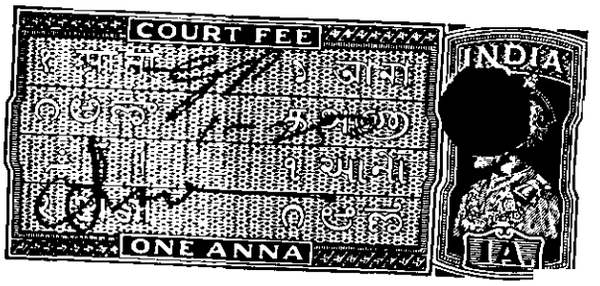
Section 102 (1):- Notwithstanding anything in the preceding sections of this - - - -



chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "proclamation of Emergency") that a grave emergency exists whereby the Secutity of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List or to make laws, whether or not for a Province or any part thereof, with respect to any matter not enumerated in any of the Lists in the Seventh Schedules to this Act:

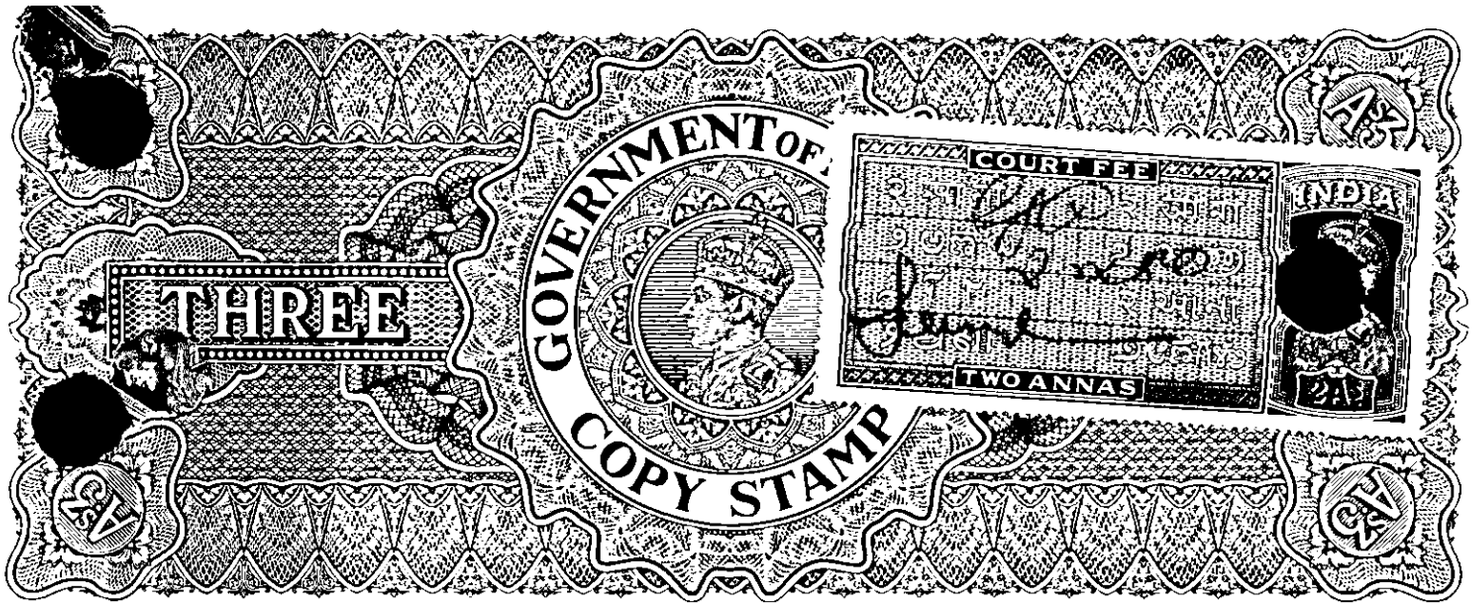
Section 104:- (The Governor-General may by Public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such List and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any





law so made, unless the Governor-General otherwise directs. It is not disputed tnat the Governor-General has declared by prclaiming that a grave emergency existed whereby securit of India was threatened. As such a proclamation had been issued the Central Legislature had power not only to make laws with respect to any matters in any of the three lists but also to make laws with respect to any matter not enumerated in any of the lists in the Seventh Schedule. Mr.Sankara Ayyar, the learned counsel for the appellant contended that the requisition of land or business is not found in any of the three lists in the Seventh Schedule of the Act and therefore the Central Legislature had no power to pass laws conferring power of requisition on the Government. In support of his argument he relied upon the decision reported in Tan Bug Taim -V.Collector of Bombay A.I.R.1946 Bom.216. on an exhaustive survey of the law on the subject Bhagrati, J. held that

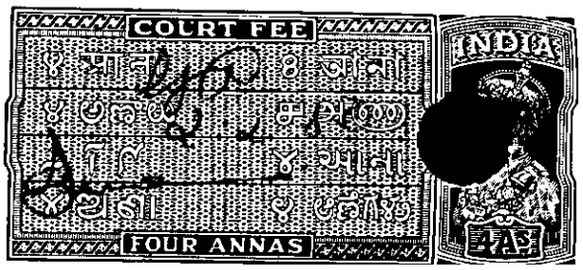
"The enactment of section 2(2)(XXIV) of the Act - - -

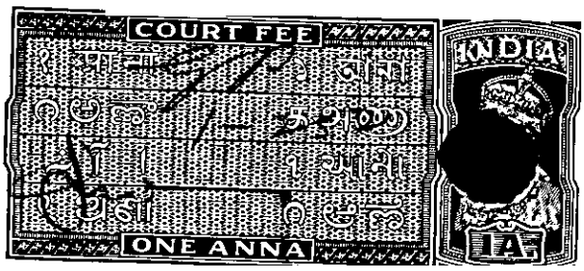


- - ~~of the Act~~ and Rule 75-A, Defence of India Rules, with reference to the requisition of immovable property in the absence of a public notification by the Governor-General under section 104, Government of India Act, is ultra vires the Central Legislature as such requisition ~~is~~ comprised ~~neither~~ in Items 9 and 21 of List II, Schedule VII nor in any other items of the lists in Schedule VII, Government of India Act."

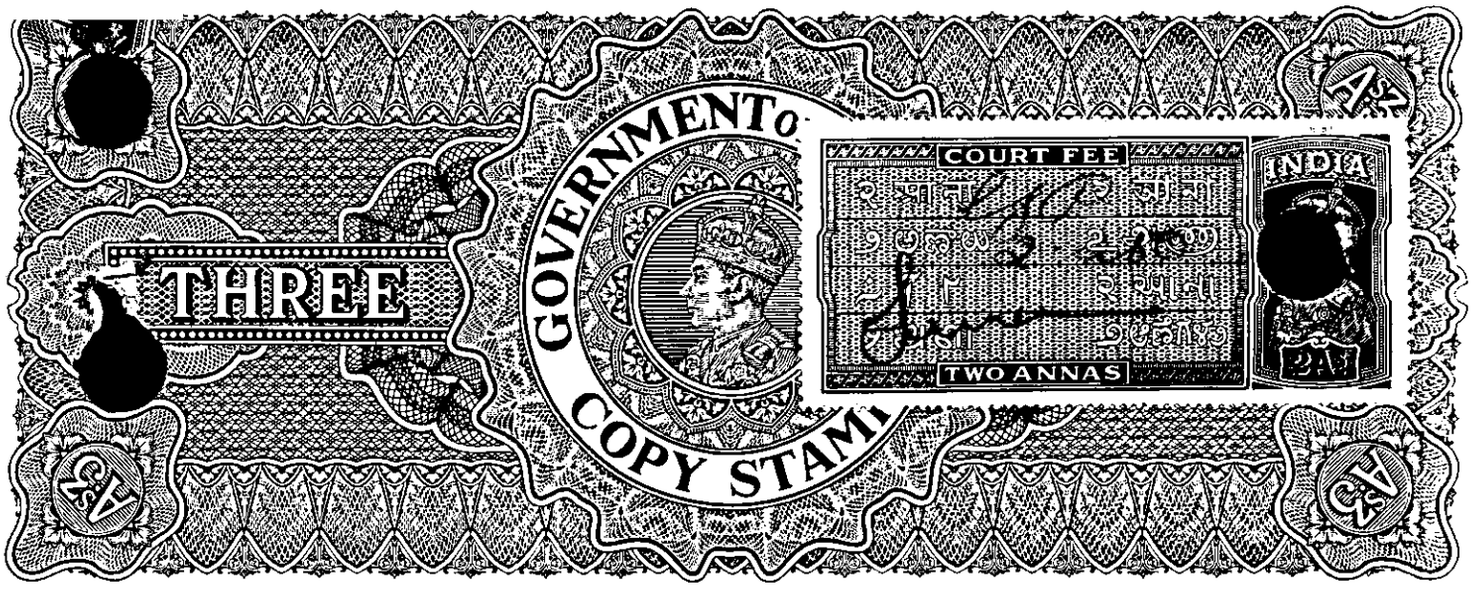
As it is not disputed in this case that there was no public notification by the Governor-General under section 104, Government of India Act, it is contended that we should follow the decision of the learned Judge. The learned Advocate General argued that the decision of the learned Judge is not sound as the requisite power could be found in Items 9 and 21 of List II, Schedule VII of the Government of India Act if the requisition was of land and to be found in items 27 and 29 of the same list if the requisition was of the - - - -

175-G.G.17.



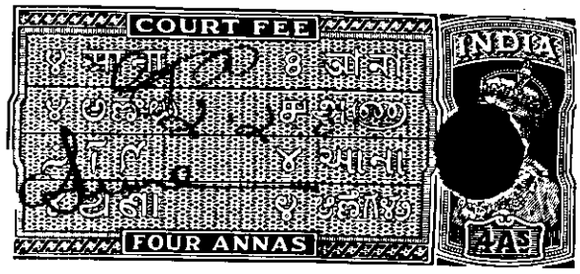


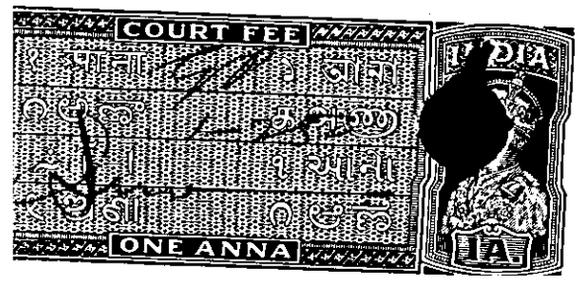
business. It is not necessary to consider the correctness of this decision or to scrutinise minutely the scope of the various items in the lists as such enquiry would be profitless in view of the amendment of section 102 of the Government of India Act. Section 102(1) of the Government of India Act was amended by 9 and 10 George VI Chapter 23. By that amendment in subsection 1 of section 102, Government of India Act, 1935 after the words "enumerated in the Provincial Legislative List" the words "or to make laws, whether or not for a Province or any part thereof, with respect to any matter not enumerated in any of the Lists in the Seventh Schedule of this Act" were inserted and by the same Act it was provided that the said Act shall be deemed to have come into operation on the commencement of Part III of the Government of India Act, 1935. The section as amended gives the Federal Legislature when the Governor-General has declared that grave emergency exists wid



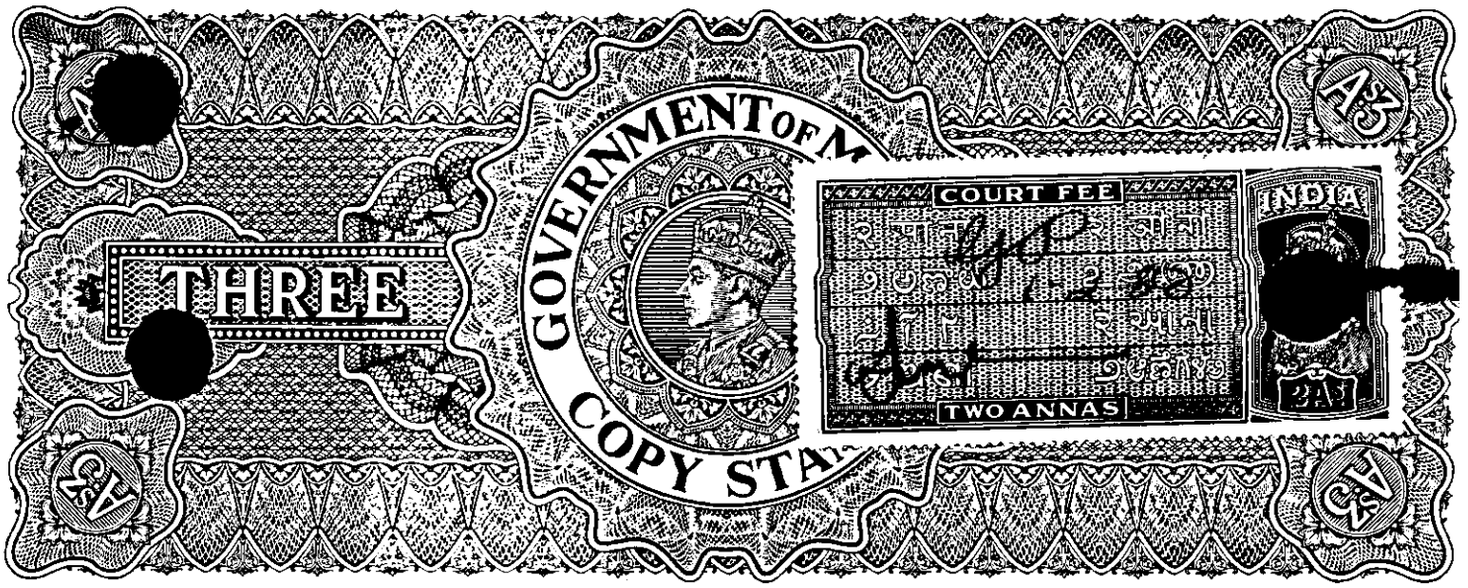
powers to make laws whether or not for a province or any part thereof with respect to any matter not enumerated in the lists. The words are very wide. Under the section Federal Legislature has ample power to pass any law for the requisition or acquisition of lands or even an undertaking. The counsel for the appellant says that under the amending section the Federal Legislature could make laws only for a Province or any part thereof and it cannot make law for the whole of India and as the Defence of India Act was passed for the whole of British India the amendment of the Government of India Act would not apply to the Defence of India Act. We cannot agree with his contention. It is no doubt true that under the Government of India Act a Province and the whole of India x are treated separately in respect of the various functions of the State; but the scheme of the sections in chapter 1 shows clearly that in the case of a proclamation of - - - -

KN





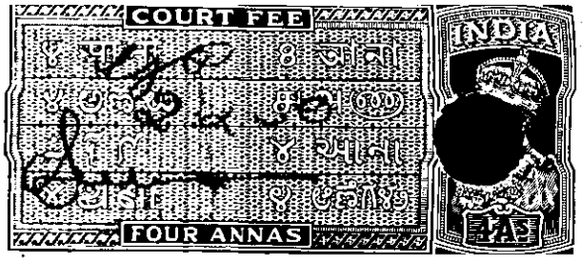
emergency the Federal Legislature can pass any law with respect to any matter with regard to the whole of India in respect of a Province or part of a Province. Under section 99 the Federal Legislature may make laws for the whole of India or any part thereof, and a Provincial Legislature may make laws for the Province or for any part thereof Under section 100 the Federal Legislature has got power to make laws in respect of Federal Legislative List and the Provincial Legislature can make laws in respect of Provincial Legislative list and both the legislatures have been empowered to make laws in regard to the concurrent Legislative list. In the case of emergency the Central Legislature is empowered under section 102 to make laws for the whole of India which necessarily includes Provinces also in respect of any subject. Whenever the powers of the Provincial Legislature are defined they are confined only to a Province or any part thereof but in the case of section 102 the Central Legislature is given power -

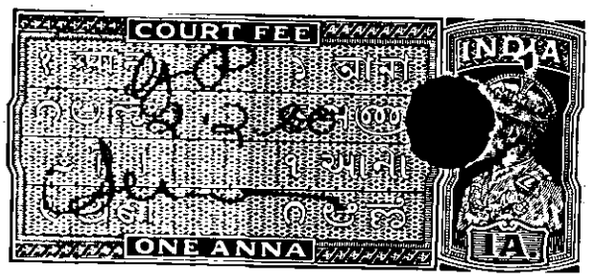


to make laws whether or not for a Province or any part thereof. These words may be contrasted with the words used in the same section 'for a Province or any part thereof'. So contrasted it is obvious that the Central Legislature has power to make laws for a Province or Provinces or the whole of India. Further when the Central Legislature in the contingency contemplated has the power to make laws for a Province or any part of a Province it certainly follows that it has power to make laws for the whole of India which is comprised of Provinces. We therefore agree with the argument of the learned Advocate General and hold that the Defence of India Act and the Rules framed thereunder conferring the power to requisition land or business on the Government is intra vires the Central Legislature. In this view it becomes unnecessary to consider the other arguments of the learned counsel in regard to this question.

Even so the learned counsel for the appellant argued that the Defence of - - -

GBN



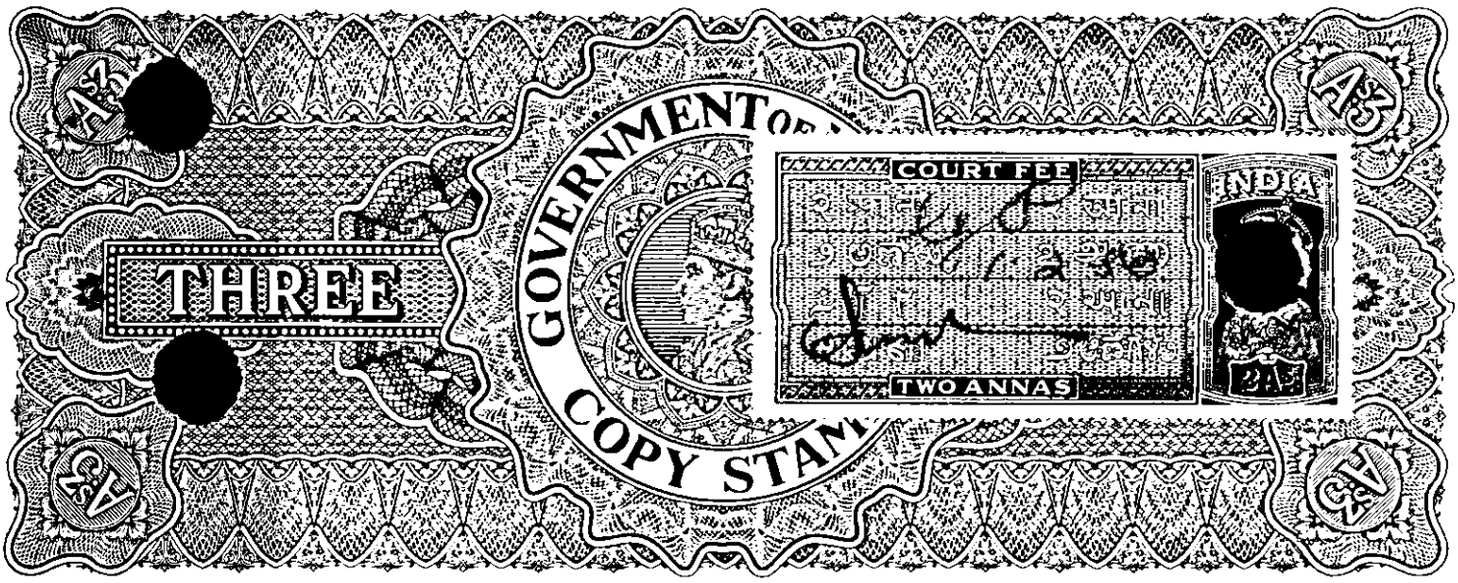


India Act or the Rules framed thereunder do not empower the Government to requisition the undertaking. The relevant provisions of the Government of India Act and the Defence of India Act and the Rules framed thereunder may now be read, Section 299(1) of the Government of India Act reads:

No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or by any commercial or industrial undertaking or any interest in, or in any company owning, any commercial or industrial undertaking unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined. Section 2(1) of the Defence of India Act 1939 says

The Central Government may, by notification in the Official Gazette, make such rules as appear to it - - - -



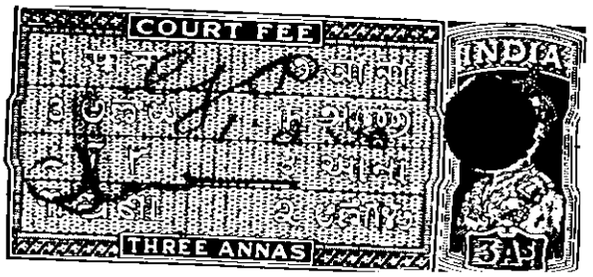
to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.

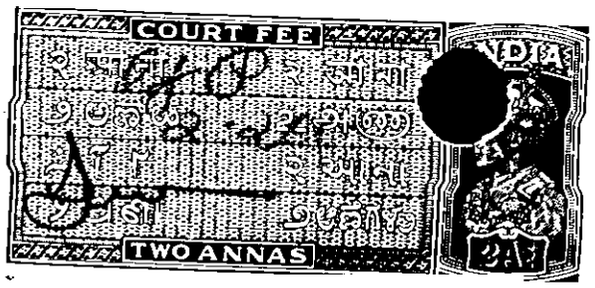
2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely:-

Section 2, sub-section 2, clause 20 the control of (agriculture, trade or industry) for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to articles or things of any description whatsoever which can be used in connection with the conduct of war or for maintaining supplies and services essential to the life of the community

Clause 24:- the requisitioning of any property, movable or immovable, including the taking possession thereof and the issue of any orders in respect thereof;

Section 19(1) - Where by or under any rule made under this-





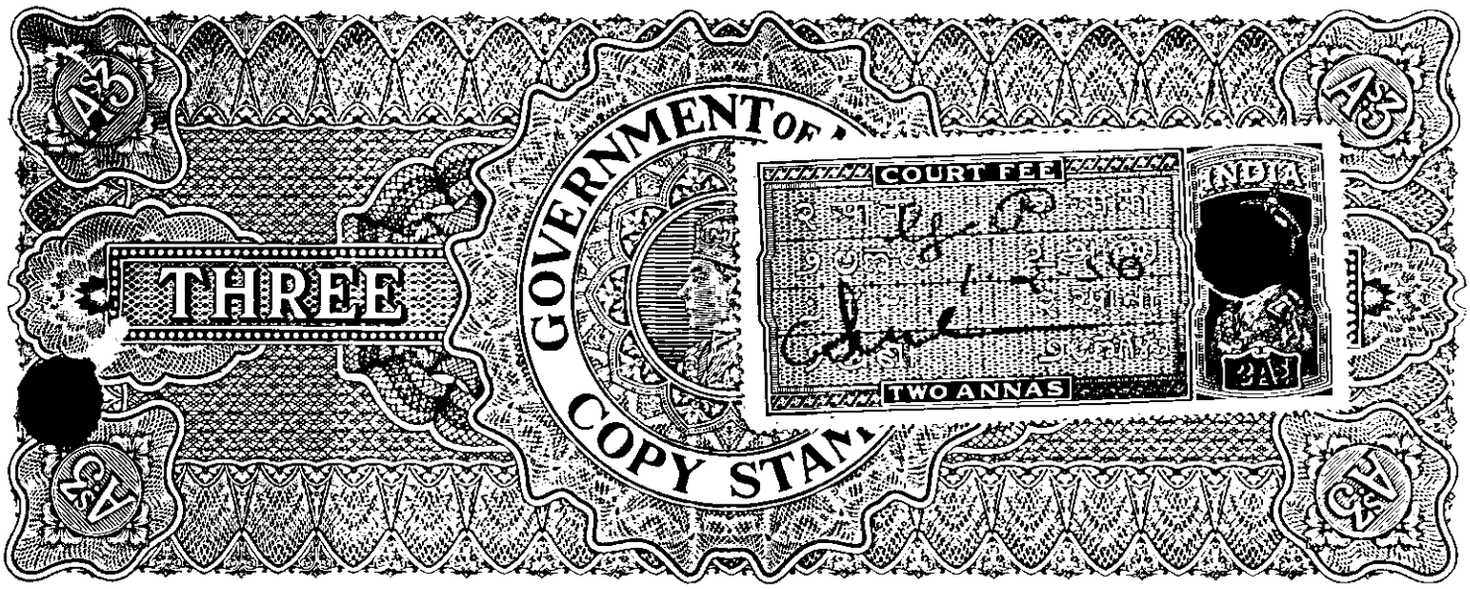
Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say . . . . .

Section 75-A of the Defence of India Rules:-

If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, movable or immovable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisition:

Provided that no property used for the purpose of religious worship and no such property as is referred to in rule 66 or in rule 72 shall be requisitioned under this rule.- - - -

175-G.G.24.



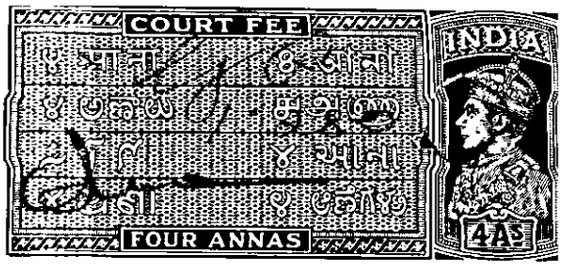
(2) Where the Central Government or the Provincial Government has requisitioned any property under sub-rule(1), that Government may use or deal with the property in such manner as may appear to it to be expedient, and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publising in the official gazette, a notice stating that the Central or Provincial Government, as the case may be, has decided to acquire it in pursuance of this rule.

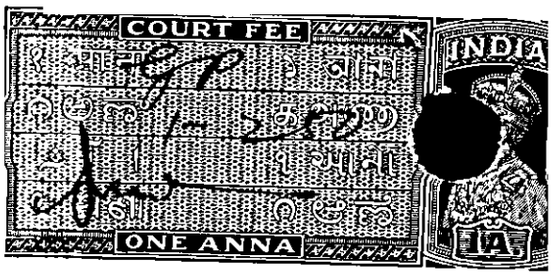
(3) Where a notice of acquisition is served on the owner of the property or published in the official gazette under sub-rule (2) then at the beginning of the day on which the notice is so served or published, the propert, shall vest in Government free from any mortgage, pledge, lien or other similar encumbrance, and the period of the requisition thereof shall end.

Rule 81 of the Defence of India Rules:-

In this rule (any reference to article shall be - - -

175-G.G.25.

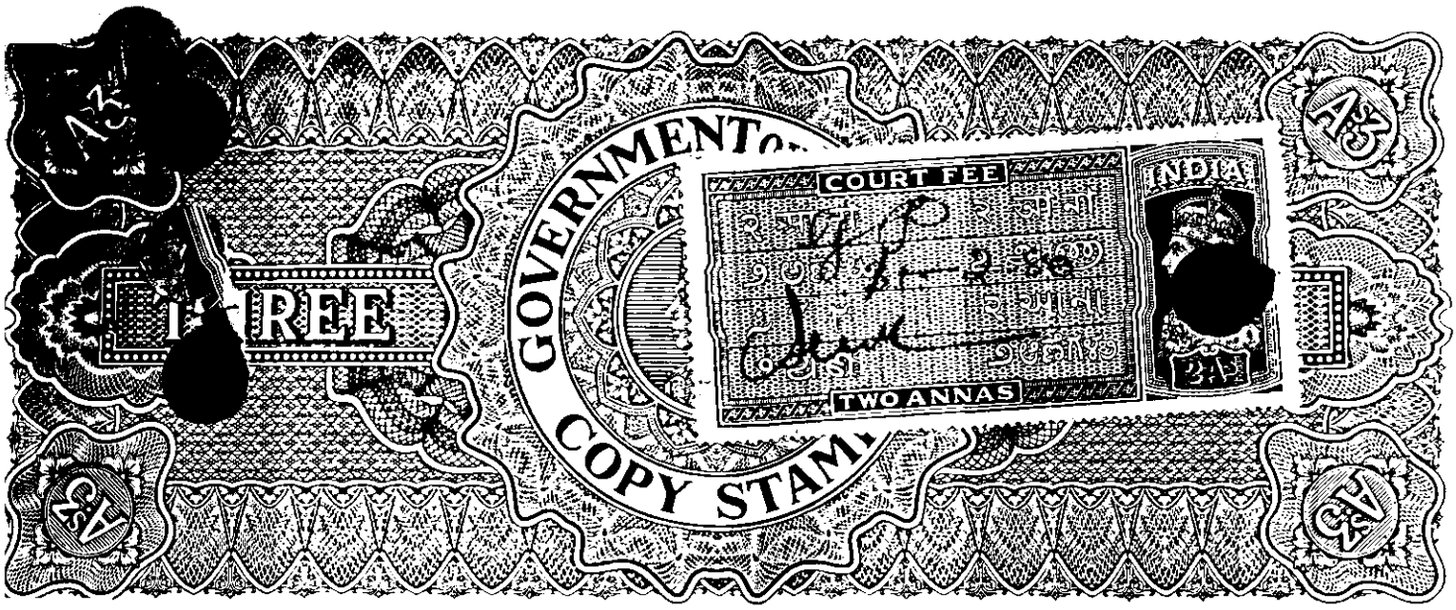




construed as including a reference to electrical energy, and the expression "undertaking" means any undertaking by way of any trade or business (and includes the occupation of handling, loading or unloading goods in the course of transport)

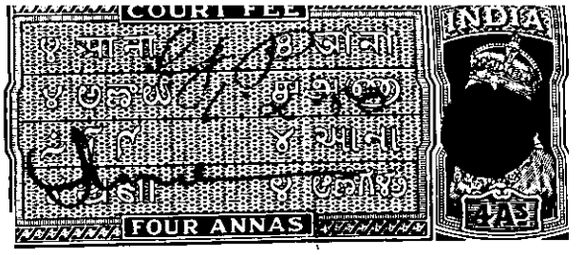
2) The Central Government (or the Provincial Government), so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order provide--

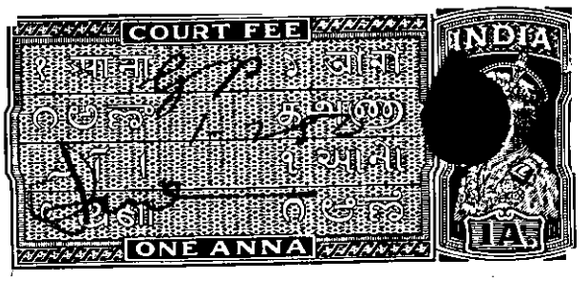
(c) for regulating the carrying on of any undertaking engaged in, or capable of doing, work appearing to the Central Government (or the Provincial Government) essential to any of the above mentioned purposes. The learned counsel for the appellant contended that under the aforesaid provisions there is an essential distinction between movable and immovable properties and an industrial undertaking. According to him in the case of the former the Government can requisition the same whereas in the case of the latter its power is confined only to regulate management of the said undertaking. - - - -



He argues that apart from the fact that the regulation of industrial undertaking is specially provided for under Rule 81 of the Defence of India Rules, the word property in Rule 75-A does not include an industrial undertaking. He reinforced his argument by referring us to section 2, sub-section 2, clauses 20 and 24 of the Defence of India Act and contended that the said rules maintained the distinction between regulating an undertaking and requisitioning of a property. He added that there is no clause under section-2, sub-section 2 authorising the Government to make a rule in regard to acquisition of any property. It may be noticed at this stage that the rules under sub-section 2 of section-2 are not exhaustive of the rule-making power of the Government, These rules are without prejudice to the generality of the powers conferred by sub-section 1. On the other hand the learned Advocate General aruged that section 299 of the Government of India Act conferred on the Federal Legislature power to make any law authorising compulsory acquisition - -

175-G.G.27.

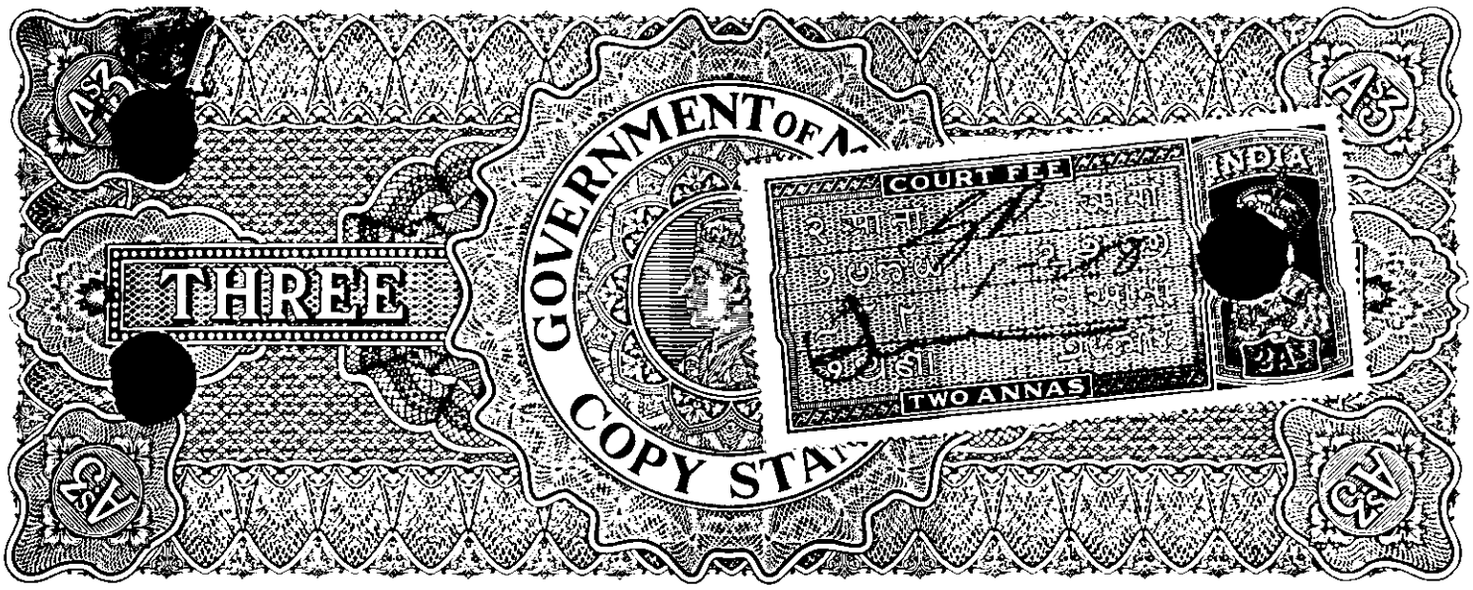




of any land or commercial or industrial undertaking after providing for the payment of compensation for the property so acquired and after fixing the amount of compensation or specifying the principles on which, and the manner in which the compensation is to be determined and that section 19 of the Defence of India Act provides the manner and the principles in accordance with which such compensation should be paid. He contended that the rules 75A and 81 framed under the Defence of India Act authorise the Government to requisition the undertaking or to regulate it in their discretion. To substantiate his argument he had necessarily to contend that the words "property, movable or immovable" in Rule 75-A are comprehensive enough to include industrial undertaking or a business.

Conflicting views were expressed on the interpretation of Rule 75-A of the Defence of India Rules by different courts. In The Lahore Electric Supply Company Ltd.-v-The Province of Punjab I.L.R.24 Lah.617 a Full Bench of that Court held that under Rule 75-A, movable and immovable property - - - -

¶75-G.G.28.

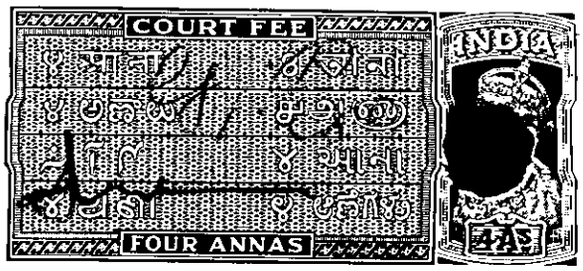


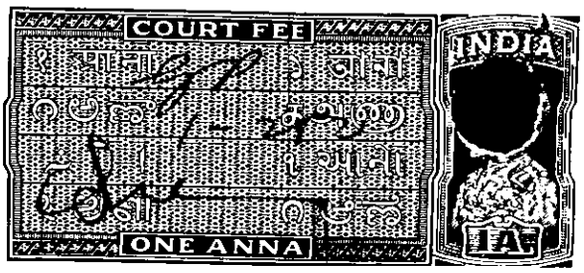
only can be requisitioned or acquired and that rule is not applicable at all to the requisition or acquisition of an undertaking or a going concern. Young C.J. held in that case that the order made by the Government was not made bona fide but for a collateral purpose. That finding was sufficient to dispose of that appeal. But the learned Judge also expressed his opinion on the construction of Rule 75-A of the Defence of India Rules. At page 639 the learned Judge observes

"In my opinion it is impossible to argue that an undertaking such as the Lahore Electric Supply company, which was what has been called a "going concern", was nothing but a collection of items of movable and immovable property. A careful examination of the provisions of Rule 75-A shows conclusively that this rule is not applicable at all to the requisition or acquisition of an "undertaking".

This view was accepted by Das, J. in Mackertich John-v-H.C.Gupta 49 C.W.N.322. At page 326 the learned Judge says

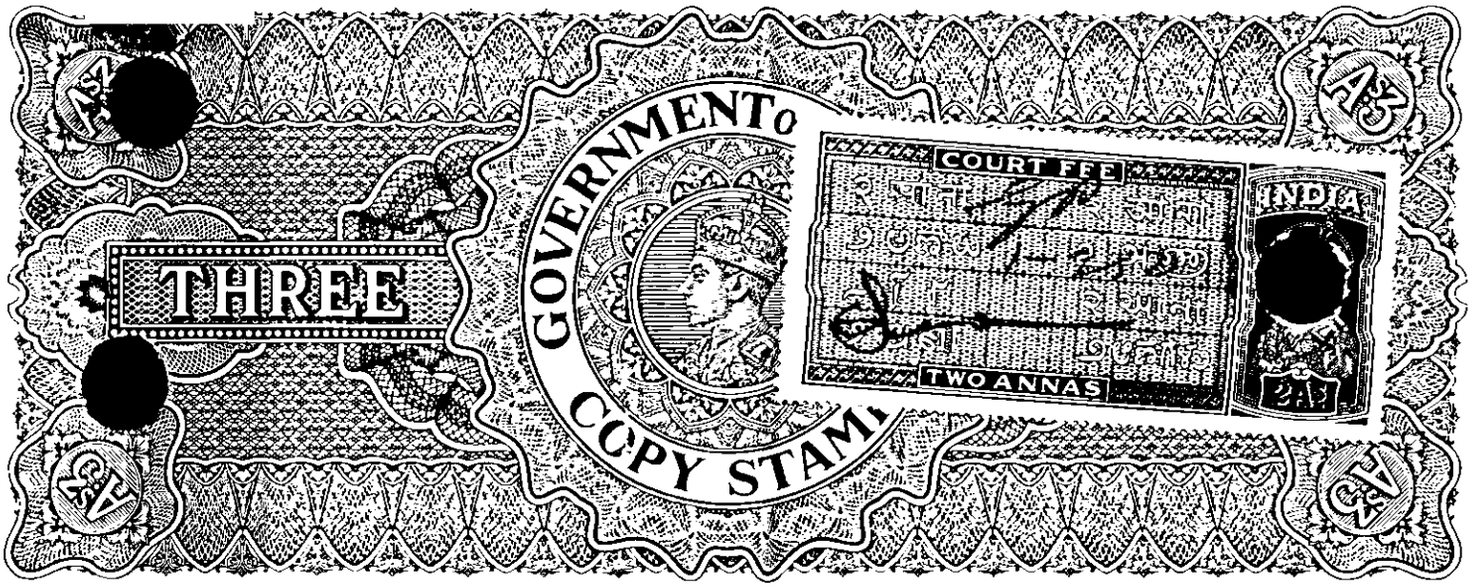
"Rule 75-A - - - -





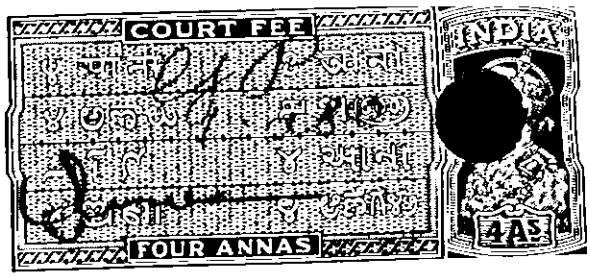
- -is concerned with requisition and acquisition of property, movable in the sense of chattels, and immovable. It does not authorise the requisitioning of any business or commercial undertaking. General control of industry etc. is secured by Rule 81. He (Mr.Chatterjee) relied on the case of Lahore Electric Supply Co.Ltd., V. The Province of Punjab I.L.R.24 Lah.617; In that case Young C.J., after reviewing some of the English decisions, held at page 638 that the Court could interfere if it was satisfied either that the order under Rule 75-A was ultra vires or that the order was not bona fide but for some collateral purpose. Then at page 639 the learned Chief Justice held that Rule 75-A was not applicable at all to the requisition or acquisition of an undertaking. I did not understand the learned Advocate-General to controvert the principles lai down in that Lahore case."

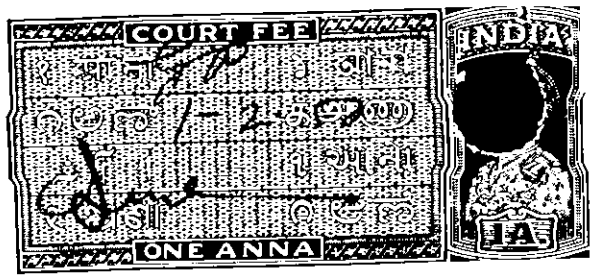
It is obvious that before the learned Judge the learned Advocate-General did not question the correctness of the decision reported in The Lahore Electric Supply Co.Ltd.-v-175-G.G.30.



The Province of Punjab I.L.R.24 Lah.617. An appeal was filed against that judgment and the judgment of the appellate Court is to be found at page 583 of the same report. H.C.Gupta -v-Mackertich John 49 C.W.N.583 -Derbyshire C.J. after referring to the decision of Young C.J. in The Lahore Electric Supply Co. Ltd.-v-The Province of Punjab I.L.R.24 Lah.517 made the following obseervations

"The words" any property, movable or immovable" must necessarily include all kinds of property, land, buildings, machinery and chattels of any kind, and anything that can be described as property. This prima facie covers a business and its goodwill. There are three exceptions to that, namely, no property used for the purpose of religious worship and no property such as is referred to in Rule 66, namely, ships and their contents and property referred to in Rule 72, namely, aeroplanes and their contents, shall ~~xxx~~ be requisitioned. If it had been desired to - - - -

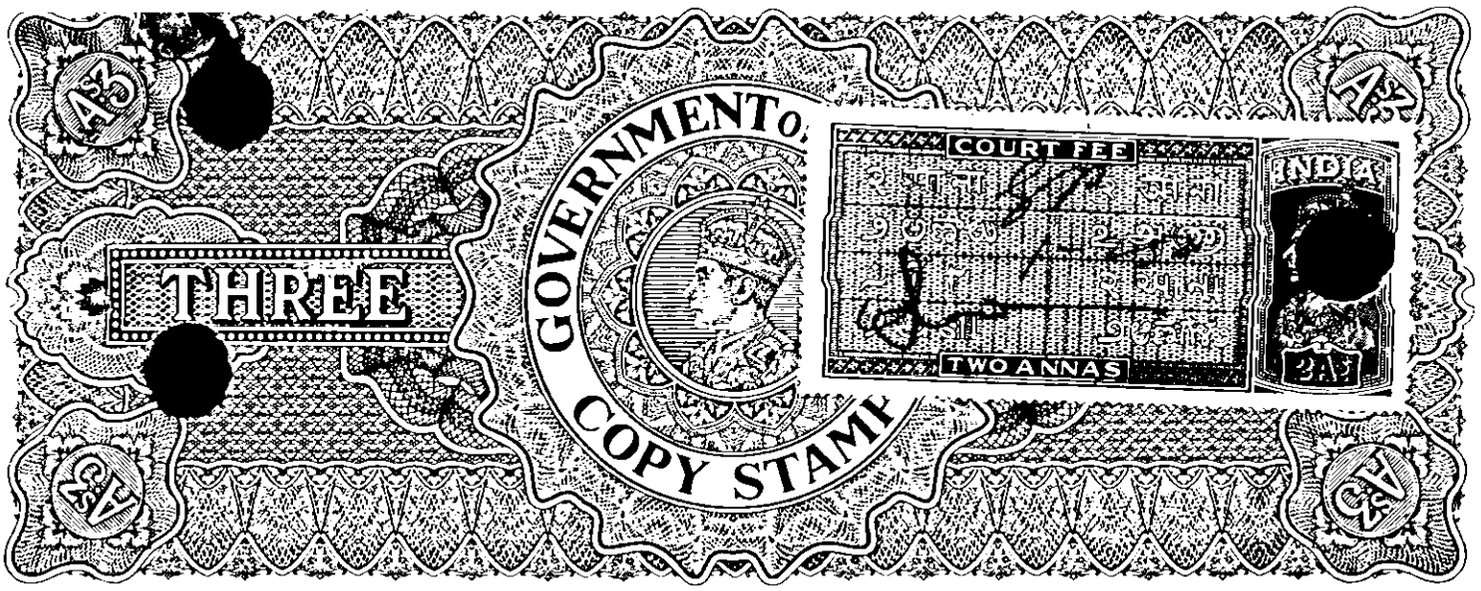




exclude businesses and their component parts including goodwill, the section could easily have provided for such exclusion. There are good reasons why businesses and parts of business and the goodwill are not excluded, since much property, essential for the purposes of Rule 75-A(i) may be part of some business. Indeed in most cases such essential property would only be likely to be found in such businesses."

The other learned Judge Gentle, J. at page 591 gives his conclusion as follows:

"The impugned order does not infringe the provisions of section 299 of the constitution Act, the deprivation of the respondents building has been accomplished by authority of law contained in Rule 75-A. Its compulsory acquisition is subject to compensation being paid and being determined under section 19(1) of the Act, the provisions of which conform with the requirements in sub-section (2) of section 299. The amount of compensation which the Respondent will be entitled to receive will, failing agreement, be ascertained as directed by the several clauses of sub-section (1) of section19 of the Act and the injurious - - -



- -effect to his undertaking, namely, his movable property, by interruption or interference in its being carried on whilst his building is requisitioned and also the period of the requisition, will have to be considered by the arbitrator when making his award as to the amount of compensation."

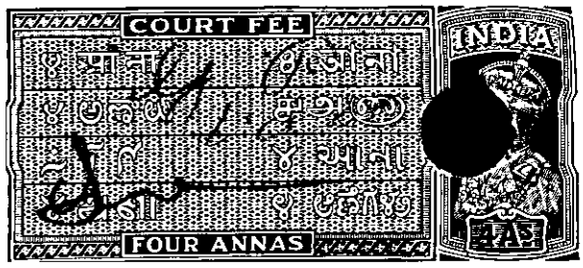
The same view was expressed by Bhagwati, J. in Tan Bug Taim -v-Collector of Bombay A.I.R.1946 Bom.216

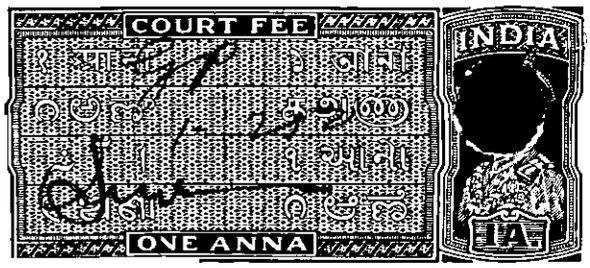
At page 250 the learned Judge observes:

"I, therefore, endorse the view, taken by Derbyshire C.J., that the words "any property, movable or immovable" used in section 2(2) (xxiv), Defence of India Act must necessarily include all kinds of property, land, building, machinery and chattels of any kind and anything that can be described as property, and that this would prima facie cover a business and its goodwill which are the essential ingredients of a commercial undertaking."

Later on the learned Judge says:

"Under the terms of section 2(2) (xx), Defence of India Act, and r.81, Defence of India Rules, the Government controls and directs in - - - -



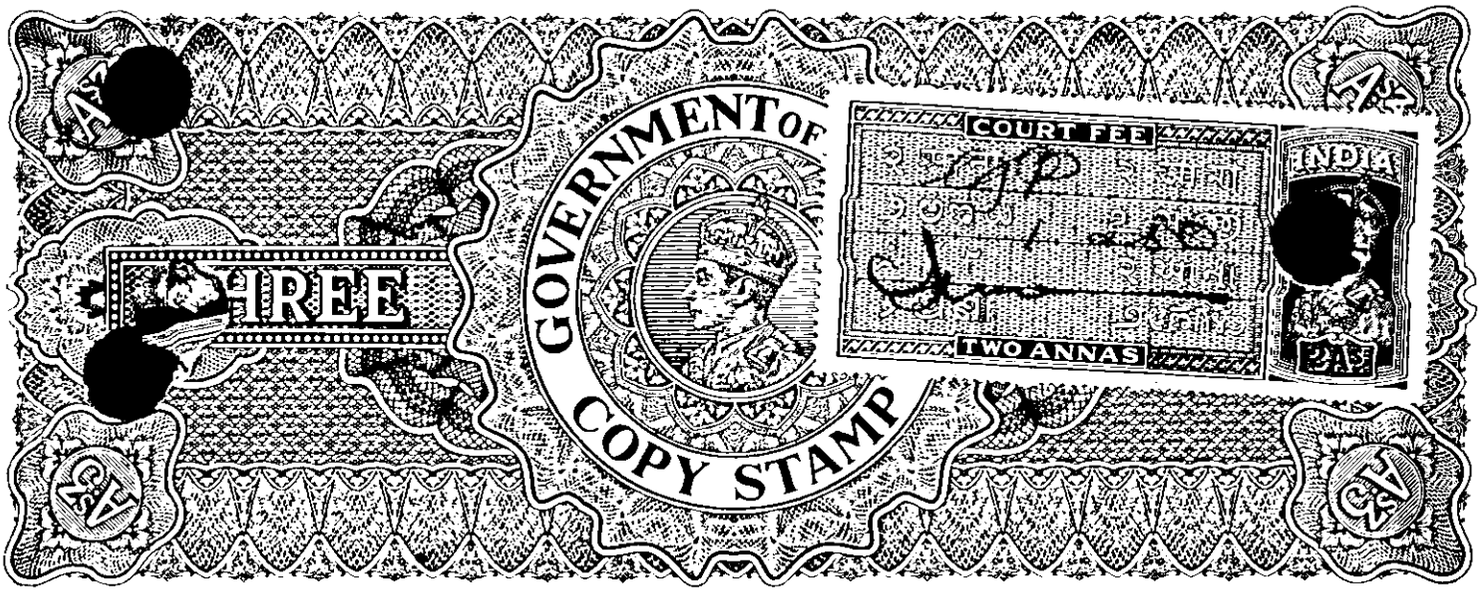


-what manner the particular property employed in agriculture, trade, or industry should be dealt with by the owners thereof. These powers of control are certainly narrower in their scope than powers of requisition of such property vested in the Government under the provisions of section 2-(2) (xxiv), Defence of India Act, and have been specially vested in the Government under section 2(2) (xx), Defence of India Act, for the purposes therein specified. I am, therefore, of opinion that even though section 2(2) (xx), Defence of India Act, and r.81 Defence of India Rules deal with commercial or industrial undertakings the mode which is therein prescribed is not the only mode in which the Government can deal with property employed in agriculture trade or industry.

The wider powers which are vested in the Government under section 2(2) (xxiv), Defence of India Act, andr.75A, Defence of India Rules are not in any manner whatever curtailed by the provisions of section 2(2) (xx), Defence of India Act, and r.81, Defence of India Rules."

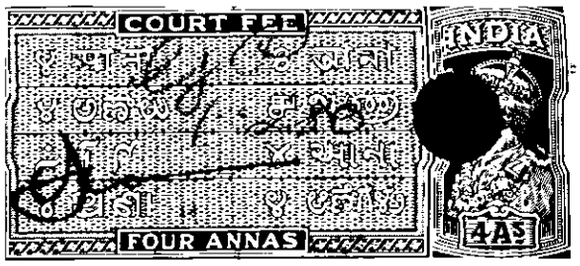
We respectfully agree with these observations.

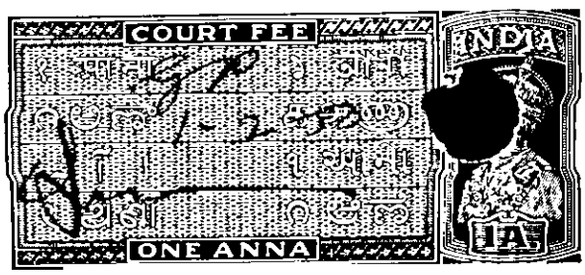
The crux of the - - - -



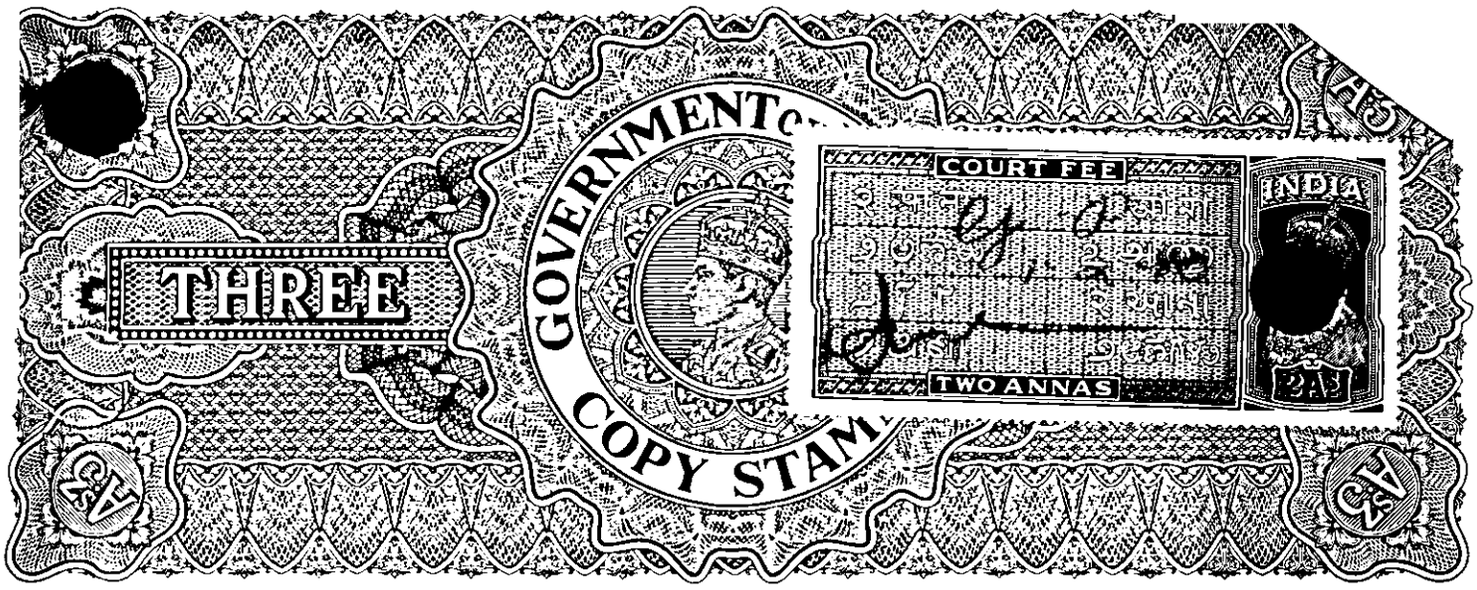
question is what is the meaning to be given to the words "property movable or immovable" within the meaning of Rule 75-A of the Defence of India Rules. Property has not been defined under the Government of India Act or under the Rules framed thereunder. Immovable property is described in section 3, cl. 25 of the General Clauses Act (Act 10 of 1897) as including land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. Section 3, clause 34 defines movable property as meaning property of every description, except immovable property. The words property movable or immovable" must have been used in section 2(2) (xxiv) of the Defence of India Act and Rule 75-A of the Defence of India Rules in the sense they were defined in the General Clauses Act. If so the definition takes in all kinds of property and therefore prima facie it includes also business or undertaking. The legal position may therefore by summarised as follows.

Under section 299 of the Government





of India Act no commercial or industrial undertaking can be acquired without providing for the payment of compensation for the property acquired and without fixing the amount of the compensation or specifying the principles on which, and the manner in which, it is to be determined. Section 19 of the Defence of India Act provides for the payment of compensation to be determined in the manner and in accordance with the principles set out in that section. If the amount of compensation could be fixed by agreement it should be paid in accordance with the agreement. If not agreed upon, the question should be referred to an arbitrator appointed for fixing the compensation. The same section also enjoins on the arbitrator so appointed to apply the provisions of sub-section 1 of section 23 of the Land Acquisition Act in awarding compensation. Rule 75-A of the Defence of India Rules framed under section 2 of the Defence of India Act empowers the Government to requisition and thereafter acquire any property including an undertaking if it is - - - -

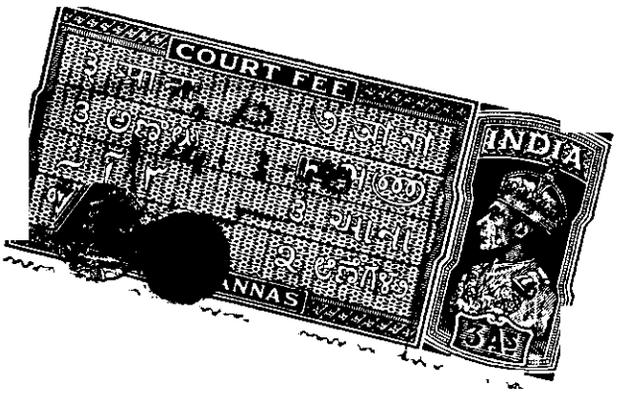


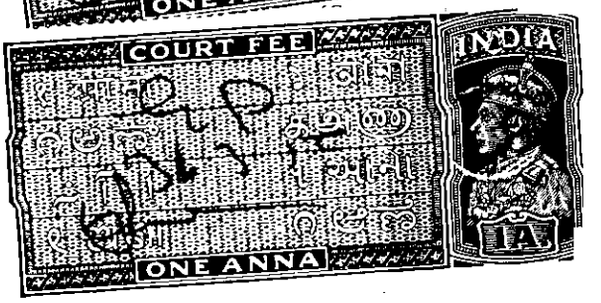
required for the purpose mentioned in that rule. Rule 81 which deals with a different situation is not in conflict with the higher power conferred under Rule 75-A of the Defence of India Rules. As the Government in this case followed the procedure prescribed by the aforesaid sections and rules we are of opinion that the Act of the Government in requisitioning and acquiring the business under Rule 75-A of the Defence of India Rules is valid.

It is then argued that Ex.D-1, the order acquiring the suit properties is invalid as it is not expressed to be taken in the name of the Governor as it should be under section 59(1) of the Government of India Act, 1935. Ex.D-1 is expressed to have been issued by the Government of Madras and is signed by the Additional Secretary to the Government. Section 59(1) reads as follows

"All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor."

In support of his argument the learned counsel - - -

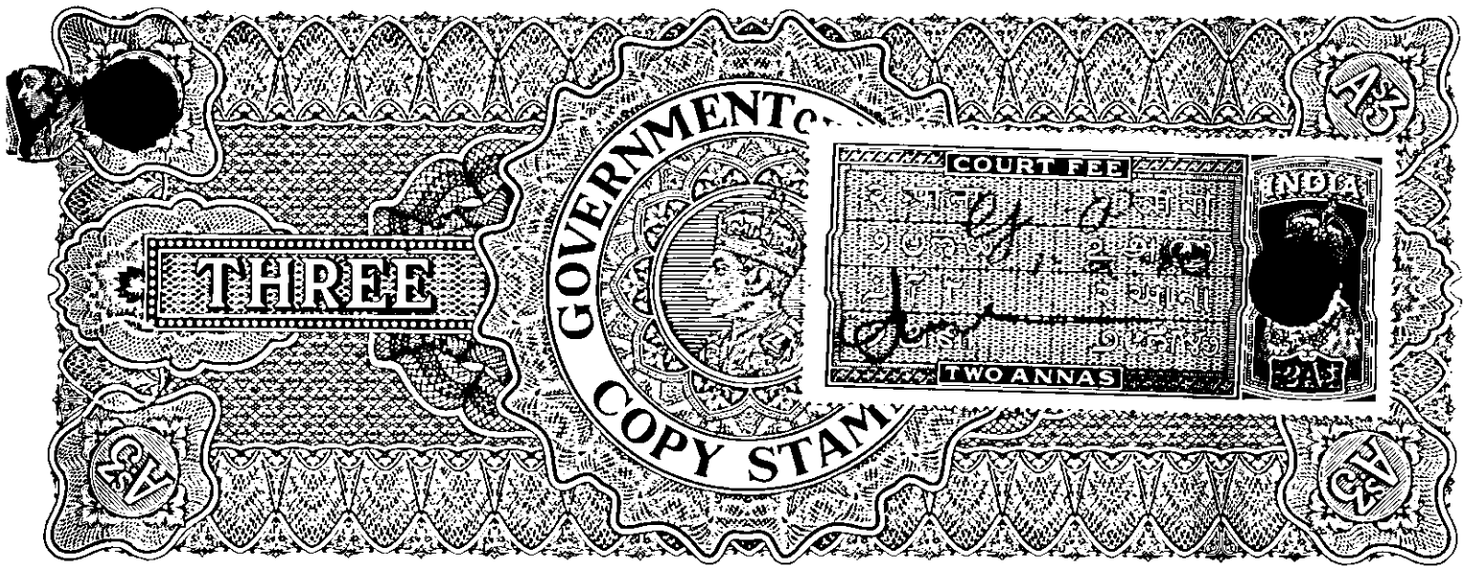




relied upon Shripad-v-Divatia A.I.R.1948 Bom.20 Bhagwati, J. observes:

> "Section 59 is not merely procedural. It is not a mere matter of form but it is one of substance. It emphasises the position of the Governor as the executive head of the Prp Province and lays down that the action of the Governor which is the executive action of the Government of the Province has got to be expressed to be taken in the name of the Governor. Apart from the scope and subject of the enactment, there is here an implied prohibition not to express the executive action of the Government of the Province as taken in any other manner, x x x Hence the provisions of section 59 (1), which are mandatory, are imperative and disobedience of the same would nullify or invalidate any order or proceeding which contravenes the same."

This judgment was taken in appeal and the appellate judgment is found in Mahomed Yasin Nurie -v-S.A.Dange A.I.R.1949 Bom.19 The learned Judges Chagla, C.J. and

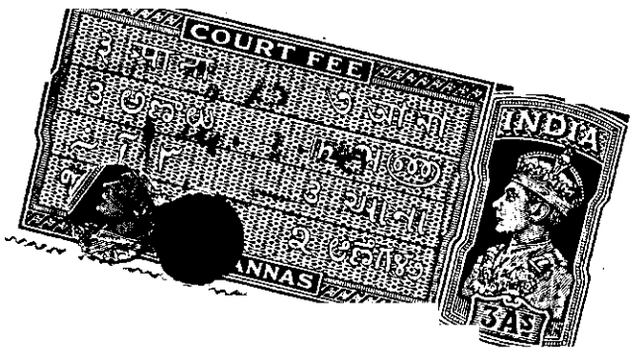


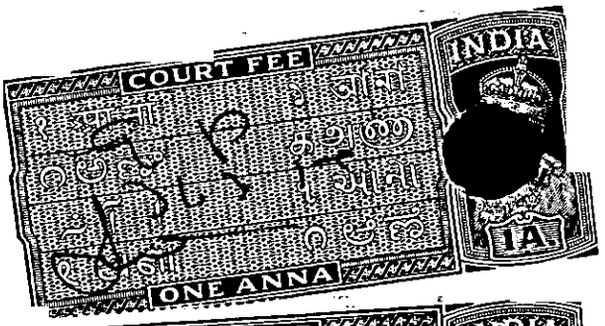
required for the purpose mentioned in that rule. Rule 81 which deals with a different situation is not in conflict with the higher power conferred under Rule 75-A of the Defence of India Rules. As the Government in this case followed the procedure prescribed by the aforesaid sections and rules we are of opinion that the Act of the Government in requisitioning and acquiring the business under Rule 75-A of the Defence of India Rules is valid.

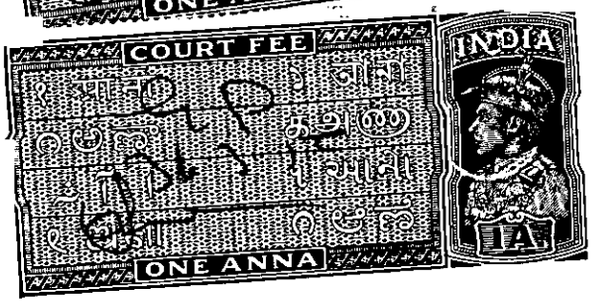
It is then argued that Ex.D-1, the order acquiring the suit properties is invalid as it is not expressed to be taken in the name of the Governor as it should be under section 59(1) of the Government of India Act, 1935. Ex.D-1 is expressed to have been issued by the Government of Madras and is signed by the Additional Secretary to the Government. Section 59(1) reads as follows

"All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor."

In support of his argument the learned counsel



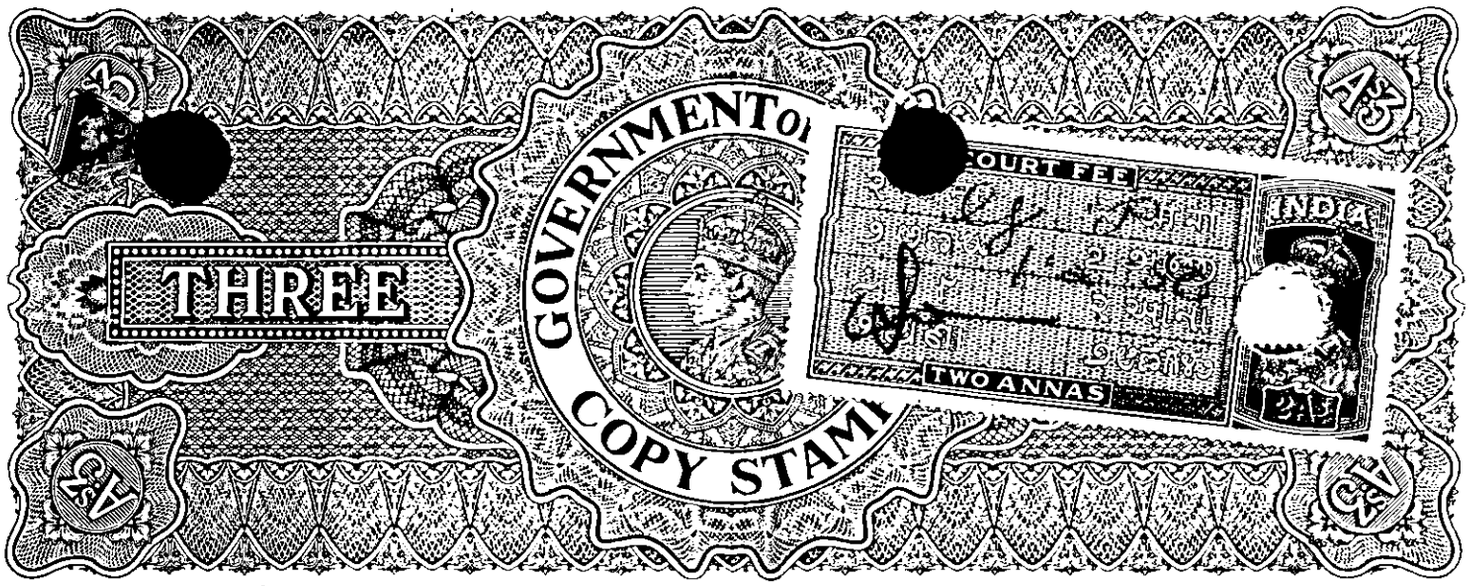




relied upon Shripad-v-Divatia A.I.R.1948 Bom.20 Bhagwati, J. observes:

"Section 59 is not merely procedural. It is not a mere matter of form but it is one of substance. It emphasises the position of the Governor as the executive head of the Prp Province and lays down that the action of the Governor which is the executive action of the Government of the Province has got to be expressed to be taken in the name of the Governor. Apart from the scope and subject of the enactment, there is here an implied prohibition not to express the executive action of the Government of the Province as taken in any other manner, x x x Hence the provisions of section 59 (1), which are mandatory, are imperative and disobedience of the same would nullify or invalidate any order or proceeding which contravenes the same."

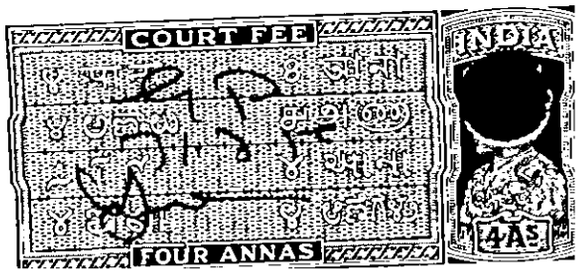
This judgment was taken in appeal and the appellate judgment is found in Mahomed Yasin Nurie -v-S.A.Dange A.I.R.1949 Bom.19 The learned Judges Chagla, C.J. and - - - - -

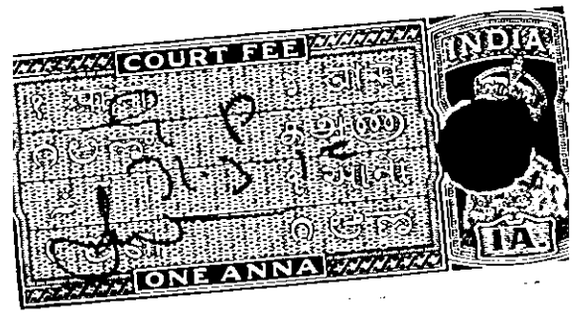


relied upon Shripad-v-Divatia A.I.R.1948 Bom.20 Bhagwati, J. observes

"Section 59 is not merely procedural. It is not a mere matter of form but it is one of substance. It emphasises the position of the Governor as the executive head of the Province"

Tandolakar, J. reversed the judgment of Bhagwati, J. The learned Judges held that the provisions with regard to the use of that expression are merely directory and procedural in character and therefore if the order is actually made by Governor exercising his individual judgment, the mere fact that it is not expressed to be so made in the order itself does not vitiate the notification. After the decision of Bhagwati, J. and before the appeal was disposed of the Federal Court in J.K.Gas Plant Mnfg. Co. (Rampur) Ltd.-v-King Emperor 10 Federal Law Journal 71 had to consider this question in regard to an order passed by the Central Government though under the Rules it should have been made in the name of the Governor-General in Council. Under section 40(1) of the Government of India Act (1918) all orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General and shall be signed by a Secretary to the Government of India, or otherwise-

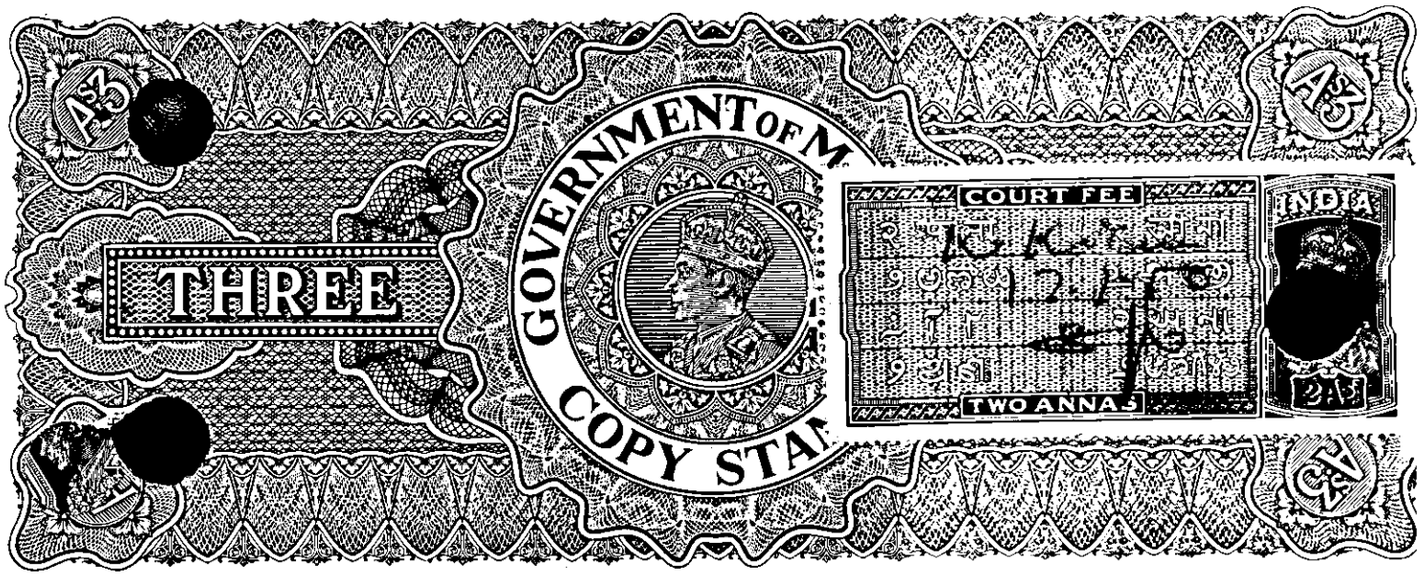




as the Governor-General in Council may direct, and when so signed shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council. But the order in question is purported to have made by the Central Government though it has been signed by the Secretary to the Government of India. It was contended that the condition about the order being expressed to be made by the Governor-General in Council has not been complied with. The learned Judges held that the provisions of section 40(1) are not mandatory and that it has in substance been complied with. We are bound by this decision and we therefore hold that the order though not expressed in the name of the Governor-is valid.

The learned Counsel next contended that the acquisition order contravenes section 15 of the Defence of India Act. Section 15 reads.

"Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little - - - -



- - -as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India."

It is contended that the provisions of this section are mandatory and that the acquisition of the business to enure beyond the termination of the war clearly contravenes the provisions of this section and therefore the acquisition is void. It is said that the acquisition of the business would certainly of property much more than is necessary under this section. It has been held in Kewalram -v-Collector of Madras 1944 (1) M.L.J.268 by a Division Bench of this Court that the provisions of section 15 are only directory and we do not see any compelling reasons to take a different view. If the provisions are only directory it was in the discretion of the Government to take into consideration the relevant circumstances in acquiring the undertaking. As the bona fides of the Government are not questioned before us it is not open for us - - - -

175-G.G.41.

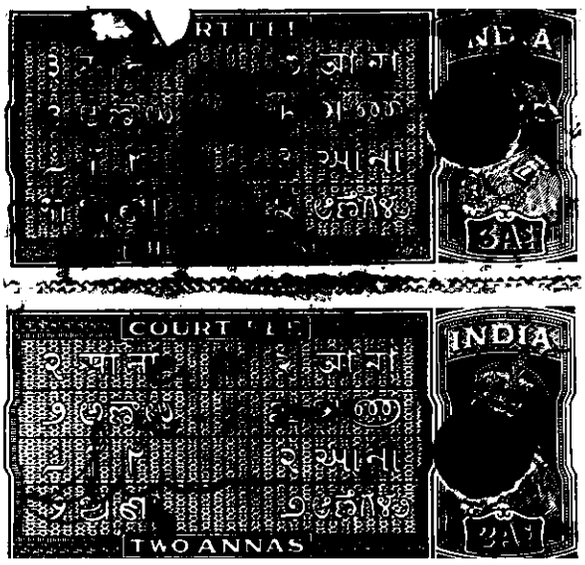
2069

CRP 994/49

2+1

Pleader 3 11/3.

11/3/50



to question the discretion of the Government in acquiring the business.

For the aforesaid reasons we hold that the requisition and the acquisition of the Kollegal Silk Filatures Ltd., Kollegal by the Government is valid and the plaintiff could be entitled only to compensation fixed by the arbitrator.

In the result the appeal is dismissed with costs.

Sd/V.Krishnaswamy, 20-12-49.

Asst.Registrar, A.J.& V.O.

Encd
C.S.Rajagopalan 5.4.50
74-G.Gopalan.7249
42nd & last stamp

(True copy) M.V.Krishnamurthi 8-4-1950
Supdt. of copyists.

THE HIGH COURT (F.) JUDICATURE AT MADRAS.

C.D. No. 8378 of 1949.

JUDGMENT

Appeal No.567 of 1946.

Application made	14-11	1949
Do. returned	/	194
Do. represented	/	194
Stamps called for	25-1	194
Do. deposited	2-2	194
Addl. Stamps called for	22-3	194
Do. deposited	31-3	194
Copy ready	8-4	1950
	10-4	194

50

mvc